



Parental Alienation: The Legal Landscape

2020 Edition



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Parental Alienation in American Family Courts: The Legal Landscape

PRESENTED BY: ASHISH JOSHI

“Parental Alienation: What’s in a name?”

- **Parental Alienation**
- **Pathogenic Parenting**
- **Programming**
- **Brainwashing**
- **Child Affected by Parental Relationship Distress (CAPRD)**
- **Parental Interference**
- **Pathological Alignment**

PA Described Independently x 6 (Not just “Gardner’s theory”)

Judith Wallerstein and Joan Kelly, California

- “Pathological alignment,” 1976.

Richard Gardner, New York

- “Parental alienation syndrome,” 1985.

Leona Kopetski, Colorado

- Her observations “were remarkably similar to Gardner’s conclusions regarding the characteristics of the syndrome,” 1998 (based on work during the 1970s and 1980s).

PA Described Independently x 6

Stanley Clawar and Brynne Rivlin, Pennsylvania

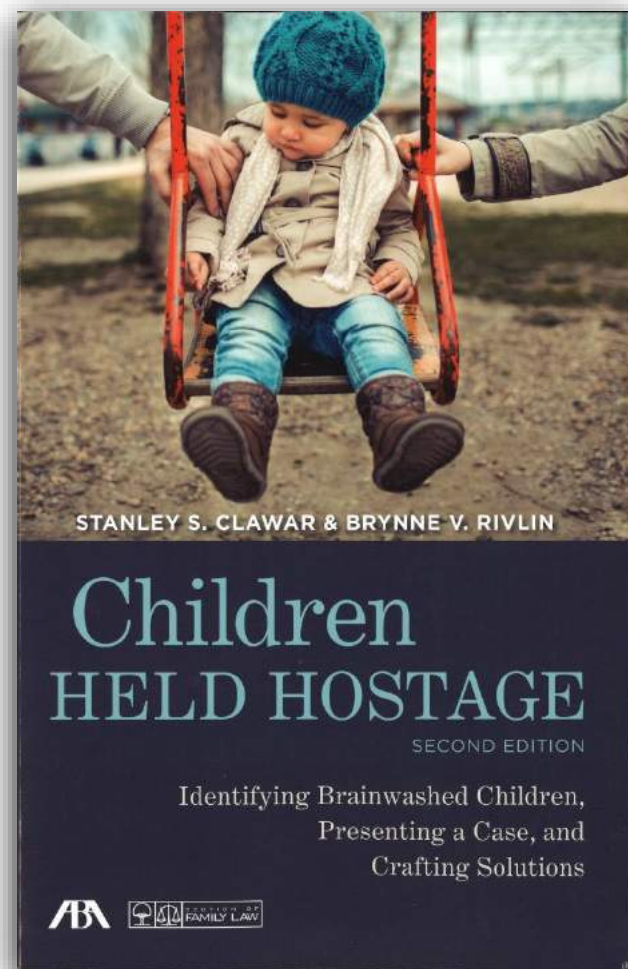
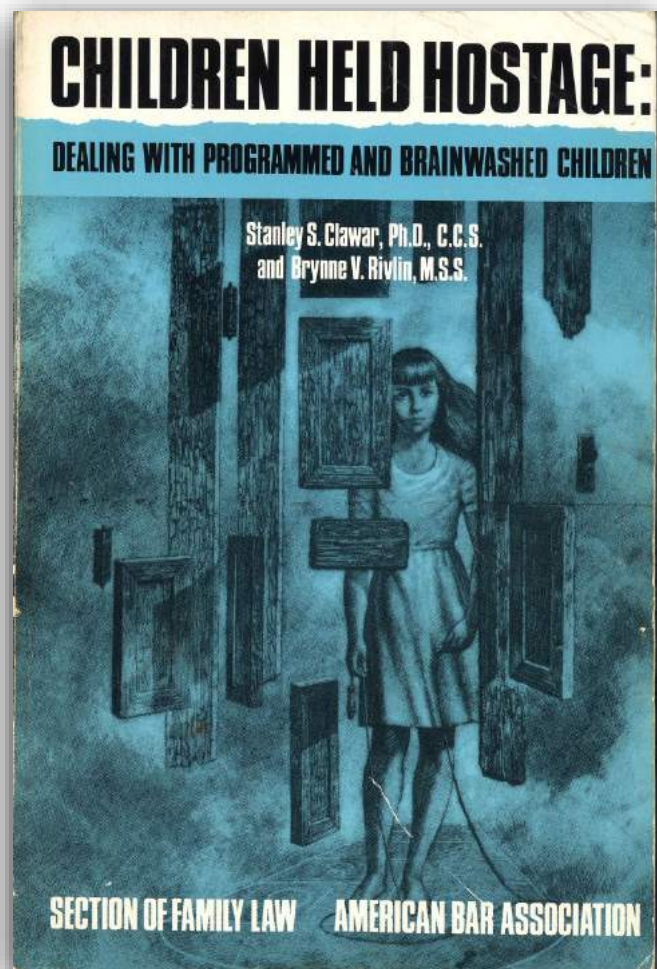
- *Children Held Hostage*, 1991 (second edition 2013) (based on work during the 1970s and 1980s).

Janet Johnston et al., California

- “Strong alliance,” 1985, *JAACAP*
- “Strong alignments related to behaviors Gardner referred to as parental alienation syndrome,” 1993.

Barry Bricklin, Philadelphia

- “Not-Based-On-Actual-Interactions (NBOAI),” 1984



Stanley Clawar and Brynne Rivlin (1991),
*Children Held Hostage: Dealing with
Programmed and Brainwashed Children*

Concepts of *programming* and *brainwashing*.

“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.”

“Brainwashing is the selection and application of particular techniques, procedures, and methods employed as a basis for inculcating the programme.”



The Custody Evaluation Handbook

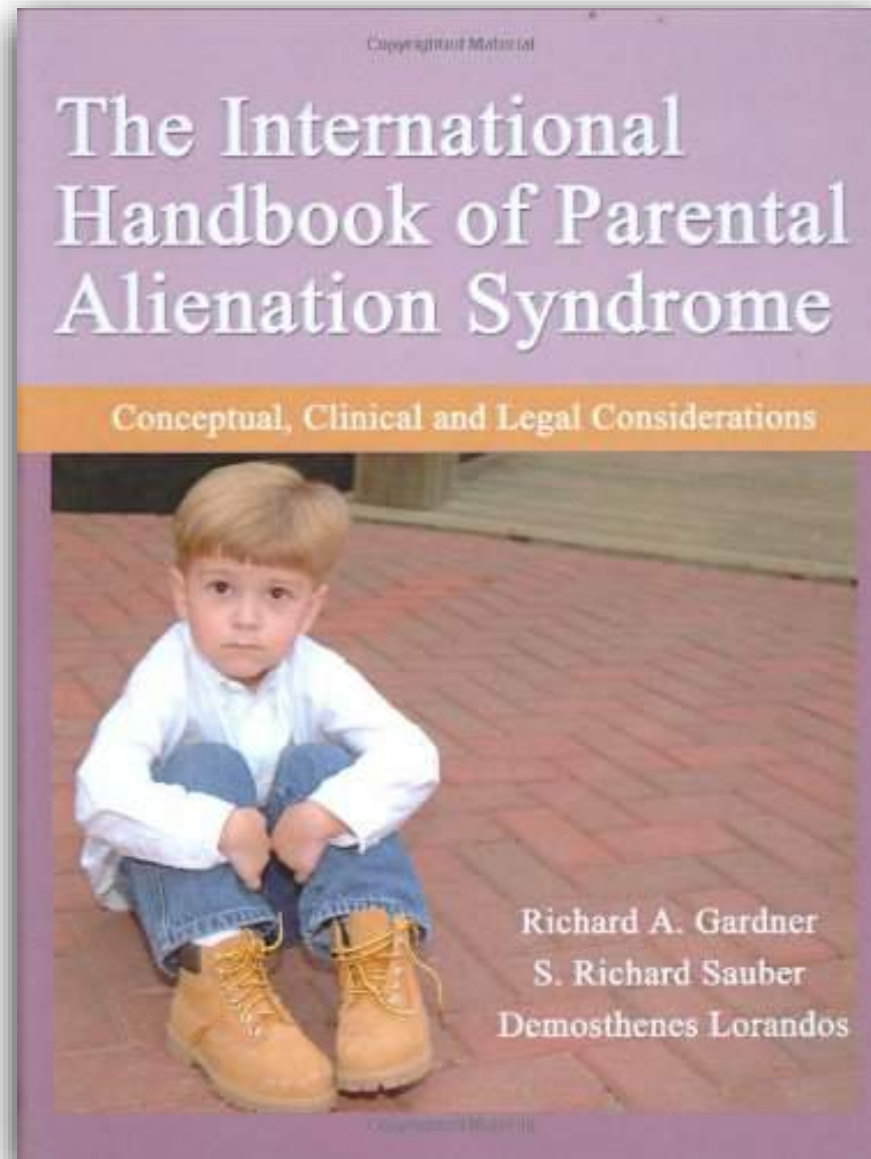
Research-Based
Solutions and
Applications

Barry Bricklin, Ph.D.

Barry Bricklin (1995),
*The Custody Evaluation Handbook:
Research-Based Solutions and Applications*

Concept of *not-based-on-actual-interaction*.

“The classic NBOAI situation, the one typically re-ferred to by people in the field as the ‘parent aliena-tion syndrome,’ is one in which the child is being systematically programmed, subtly or blatantly, by one parent to hate and/or fear the target parent.”



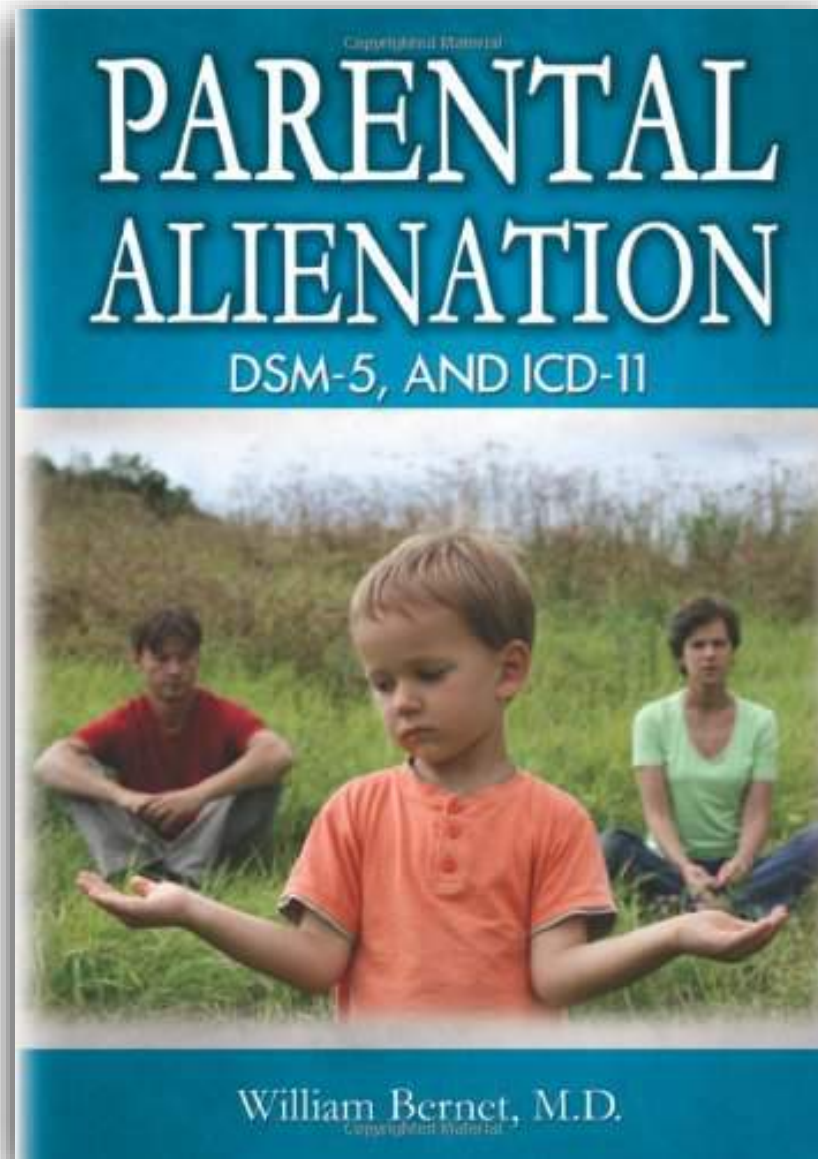
Published 2006

Edited by

Richard A. Gardner

S. Richard Sauber

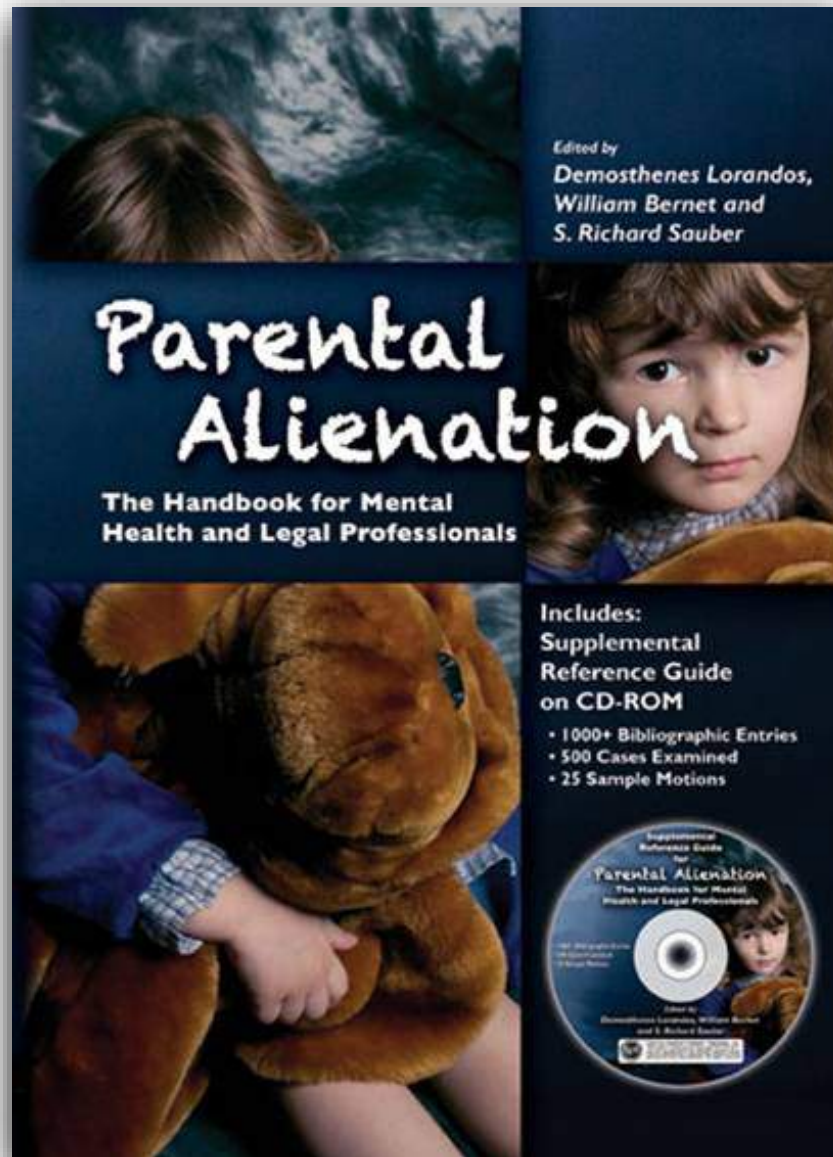
Demosthenes Lorandos



Published 2010

Edited by

William Bernet



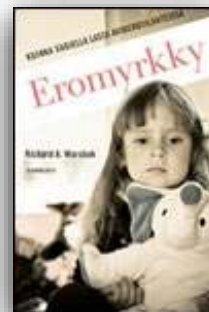
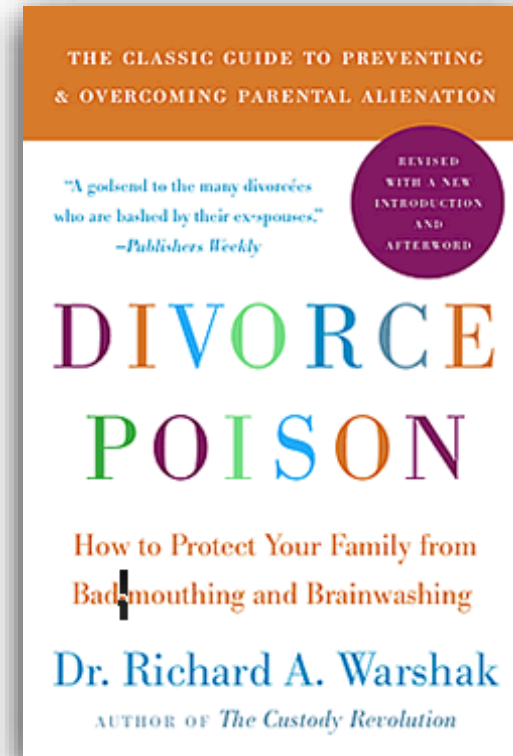
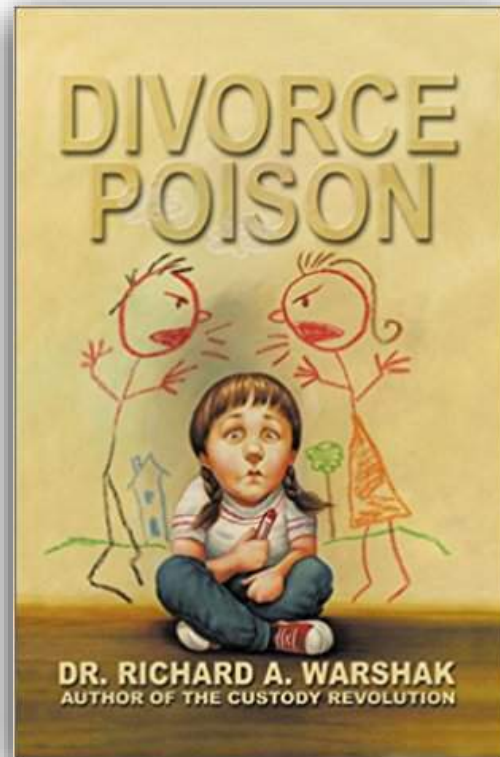
Published 2013

Edited by

Demosthenes Lorandos

William Bernet

S. Richard Sauber



Richard Warshak (2001),
*Divorce Poison: Protecting the
Parent-Child Bond from a Vindictive Ex*

“This book explains why the common approaches are impotent, why doing nothing will accomplish nothing, and why relying primarily on reasoning is an unreasonable approach to the problem.”

THE ALIENATED CHILD

A Reformulation of Parental Alienation Syndrome

Joan B. Kelly and Janet R. Johnston

In this article, controversies and problems with parental alienation syndrome are discussed. A reformulation focusing on the alienated child is proposed, and these children are clearly distinguished from other children who resist or refuse contact with a parent following separation or divorce for a variety of normal, expectable reasons, including estrangement. A systemic array of contributing factors are described that can create and/or consolidate alienation in children, including intense marital conflict, a humiliating separation, parental personalities and behaviors, protracted litigation, and professional mismanagement. These factors are understood in the context of the child's capacities and vulnerabilities.

Joan Kelly and Janet Johnston (2001),
*The Alienated Child: A Reformulation
of Parental Alienation Syndrome*

Concept of *the alienated child*.

“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.”

An Attachment-Based
Model of Parental Alienation

C. A. CHILDRESS, Psy.D.



Foundations

Craig A. Childress

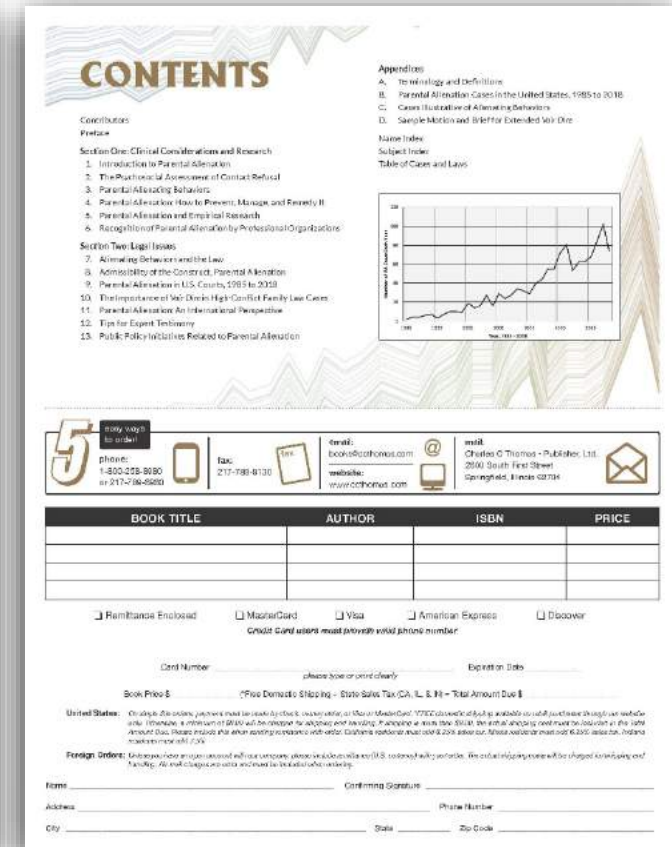
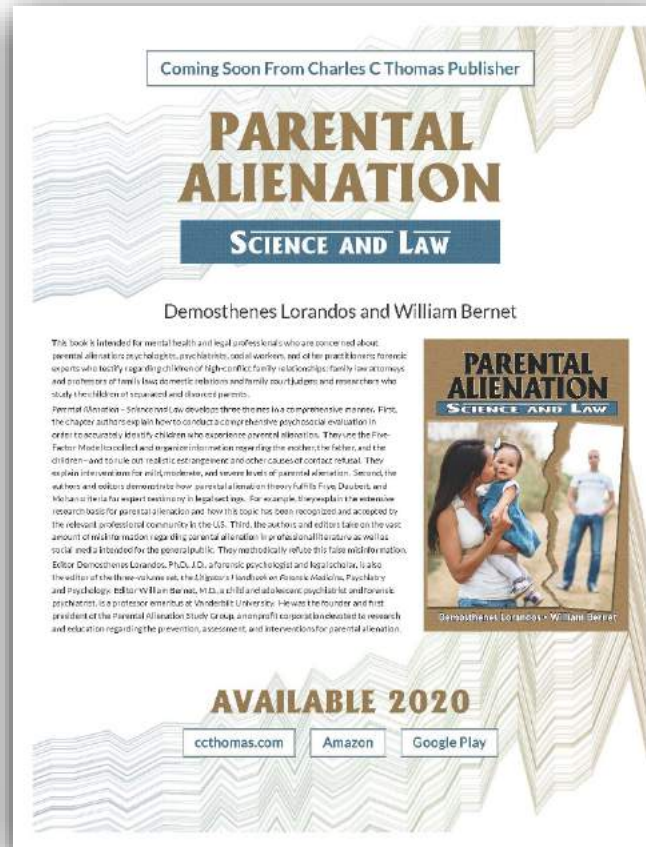
Craig Childress (2015), *An Attachment-Based Model of Parental Alienation: Foundations*

Concept of *attachment-based parental alienation*.

AB-PA refers to “the child’s triangulation into the spousal conflict through the formation of a cross-generational coalition with a narcissistic/(borderline) parent.”

Parental Alienation Science and Law

Forthcoming in 2020



It is important to remember that the research on the phenomenon of Parental Alienation is BOTH:

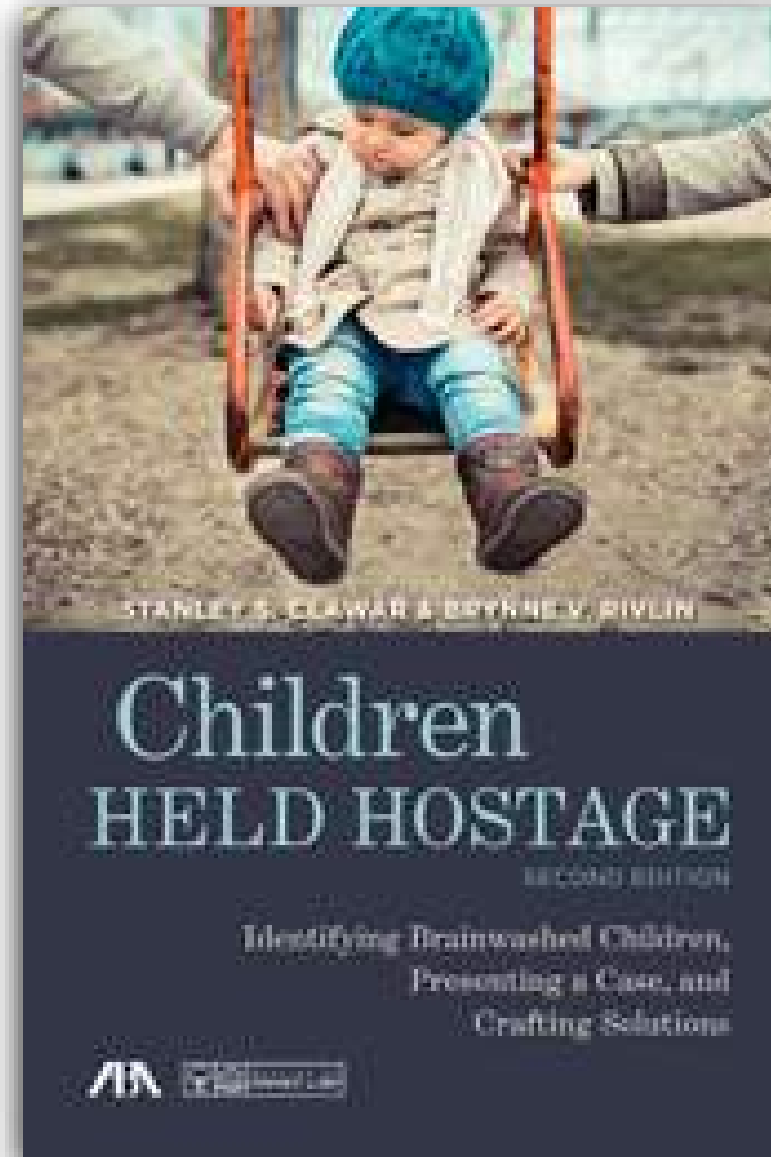
QUALITATIVE

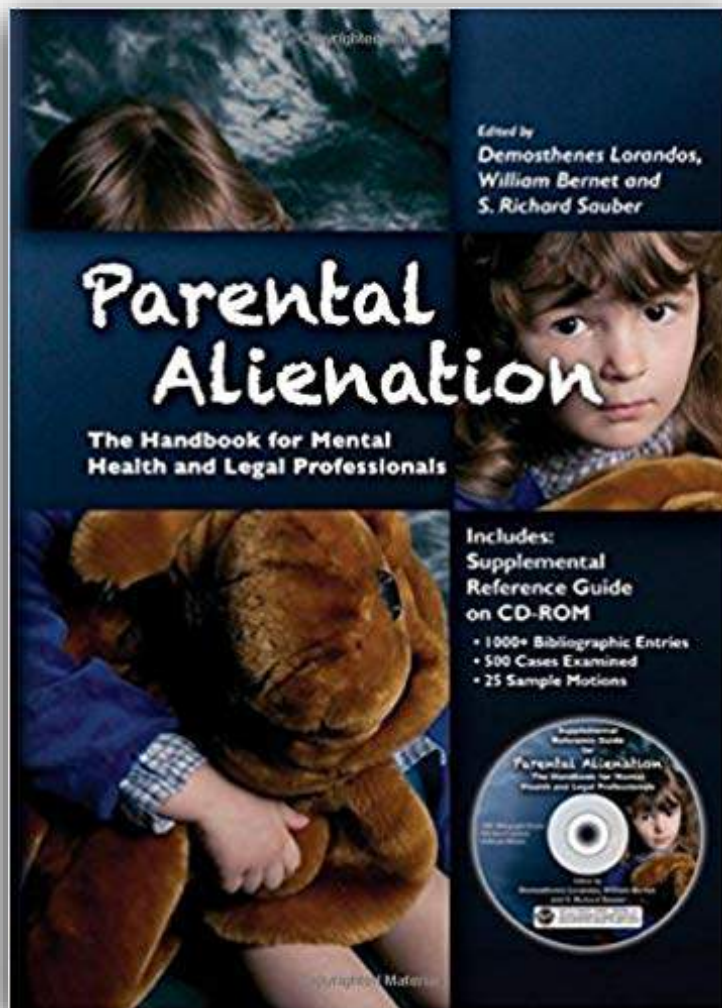
+

QUANTITATIVE

Qualitative Research

- Clawar & Rivlin (2013)
- Over 1,000 families
- Broad definition of programming and brainwashing children
- More severe cases comparable to parental alienation





Chapter 11

PARENTAL ALIENATION RESEARCH AND THE *DAUBERT* STANDARDS

AMY J. L. BAKER

Case Example

Mr. and Mrs. X divorced when Mrs. X was pregnant with the couple's fifth child. Extensive documents indicate that since the birth of their first child, Mr. X had been an involved and active father, teaching his children academic subjects while they were homeschooled as well as actively encouraging their various extra-curricular activities (piano lessons, skiing, gymnastics, baseball, and so forth). At the onset of the marital dissolution, Mrs. X, according to numerous documents, engaged in a series of behaviors designed to undermine the children's confidence in their father and interfere with his contact with them (i.e., making a missing children's report while the children were with their father during his parenting time). Over a dozen child abuse claims were filed against him, none of which were indicated or founded. Ironically, it was on her watch that the family's youngest child nearly drowned, and it was during her parenting time that she abused drugs, using child support payments to cover her weekend drug habit. Once she remarried, she used her new husband's name on school forms and began to schedule competing activities for the children during the time they were supposed to be with their father. Although Mr. X was interpersonally intense, ascribed to unorthodox political conspiracy theories, and was a congregant at a church of what some might consider a fringe sect of the Catholic faith, he was never found to be abusive or neglectful of his children. After ten years of concerted campaigning on the part of Mrs. X and her new husband, however, the children came to vehemently reject their father, refusing any visitation or contact with him whatsoever. Despite a compelling and PAS-in-

Table 11.1
OVERVIEW OF EMPIRICAL STUDIES IN
THE FIELD OF PA STRATEGIES OR PAS

	Study 1	Study 2
Reference	Baker, A. J. L. (2010)	Baker, A. J. L. (2007a)
Overview	252 adults completed measures of psychological maltreatment as well as responded to a single item regarding one parent trying to turn them against the other parent	40 adults were interviewed about their experiences growing up. Selection of sample was based on response to flyer asking for adults who—when they were children—had been turned against one parent by the other parent.
Construct	PA strategies	PA strategies
Hypotheses	Respondents who endorsed the item would have statistically significantly higher scores on measures of psychological maltreatment.	Research questions: (1) Did anyone self-identify as having been turned against one parent by the other? (2) What effects did they perceive this to have? (3) What parental strategies did they identify as affecting them?
Falsifiable	If none of the respondents had endorsed the item or if no statistical associations between PA strategies and psychological maltreatment.	If no one had responded to flyers or if all who had responded reported that the experience of alienation had not negatively affected them.
Measure Validity	Concurrent validity of the item in that scores on all measures of psychological maltreatment were statistically significantly higher for those who endorsed the "tried to turn" item than for those who did not.	Validity of construct in that the findings were consistent with theory regarding presence of PA strategies and impact of alienation on functioning.
Measure Reliability	N/A, PA strategies measured with a single item.	N/A, qualitative data
Error Rate	N/A for the measure but all effects were significant at $p < .05$ or better.	N/A
Design Validity	No threats although all data are self-report and retrospective.	No obvious flaws, although all data are self-report and retrospective and qualitative data coded by author.
Peer Review	<i>Journal of Divorce & Remarriage</i>	Book published by W. W. Norton. Articles published by <i>American Journal of Family Therapy</i> , <i>Cultic Studies Review</i> , and <i>American Journal of Forensic Psychology</i> .

continued

Table 11.1—Continued

	Study 3	Study 4
Reference	Baker, A. J. L. (2007b)	Baker, A. J. L. & Ben Ami, N. (2011)
Overview	106 custody evaluators rated how possible they thought it was for one parent to turn a child against the other parent.	118 adult children of divorce completed the Baker Strategies Questionnaire (BSQ) along with standardized measures of self-esteem, substance abuse, self-sufficiency, psychological maltreatment, and attachment style.
Construct	PAS	PA strategies
Hypotheses	Research questions: (1) What proportion of custody evaluators endorsed the concept of PAS? (1) What predicted their endorsement?	Scores on the BSQ would be statistically significantly associated with identified outcomes.
Falsifiable	If none of the evaluators had endorsed the concept of PAS?	If none of the respondents had endorsed the items on the BSQ.
Measure	Item had face validity. Data demonstrated validity of the construct in that 100% of sample endorsed the statement that it was somewhat or very much possible for a parent to turn a child against the other parent.	Content validity of the BSQ in that it matched the content identified in other studies of PA strategies. Concurrent validity of the BSQ measure and the construct of PA strategies established in that scores on the BSQ measure and the construct of PA strategies established in that scores on the BSQ were statistically significantly correlated with psychological maltreatment, self-sufficiency, and self-esteem that was associated with depression and attachment.
Measure Reliability	N/A, a single item	Internal reliability established via Cronbach's alpha of BSQ of .96.
Error Rate	N/A for the measure but all effects were significant at $p < .05$ or better.	N/A for the measure, but all effects were significant at $p < .05$ or better.
Design Validity	No threats to internal validity	No threats although all data are self-report and retrospective.
Peer Review	<i>American Journal of Family Therapy</i>	<i>Journal of Divorce & Remarriage</i>

Review of Quantitative Research

Review of 58 quantitative research studies published in peer reviewed journals.

“There is 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.”

M. Saini et al., Empirical Studies of Alienation. In *Parenting Plan Evaluations*, edited by L. Drozd et al., 2016.

Quantitative Research - Burrill

- Burrill, J. (2001). *Parental Alienation Syndrome in Court Referred Custody Cases*.
- Studied 30 families with intractable custody disputes
- Classification of 59 children:
 - Mild (22): child parrots negative statements, but visits
 - Moderate (17): vilification and anger, resists visits
 - Severe (20): “hates” parent, refuses visits

Quantitative Research - Burrill

- **Classification of 30 alienating parents:**
 - **Mild:** desire for vengeance; slight programming; strong preference for primary custody of child but believes alienated parent should be involved.
 - **Moderate:** rage from feeling rejected; withholds child; repeated negative comments about other parent; suggests the other parent is dangerous.
 - **Severe:** obsessed with rage; fanatically prevent visits; often paranoid; will not comply with court orders.

Quantitative Research - Burrill

- **CONCLUSIONS**
- “The more negative behaviors the child exhibited, the more negative the parental behaviors.”
- “Children in the severe group present as more disturbed than children in the mild group.”
- “The results of this study appear to support the existence of PAS.”

Quantitative Research – Bernet *et al.*

- Bernet, W. *et al.* (2018), An Objective Measure of Splitting in Parental Alienation: **The Parental Acceptance-Rejection Questionnaire** (PARQ).
- Alienation = rejection of a parent without a good reason – rejection is very strong.
- Neglect = rejection of a parent for a good reason – feelings are ambivalent.
- Results are **counterintuitive**, but convincing.

Has there been much research regarding PA?

William Bernet, M.D. and others have found more than 900 articles, chapters, and books in the professional literature of numerous countries ...

- Algeria
- Argentina
- Australia
- Austria
- Belgium
- Brazil
- Canada
- Columbia
- Chile
- Cuba
- Czech Republic
- Denmark
- Finland
- France
- Germany
- Hong Kong
- India
- Israel
- Italy
- Japan
- Latvia
- Lithuania
- Malaysia
- Malta
- Mexico
- Morocco
- Netherlands
- Norway
- Poland
- Portugal
- Romania
- South Africa
- Spain
- Sweden
- Switzerland
- Turkey
- United Kingdom
- United States

DIAGNOSTIC AND STATISTICAL
MANUAL OF
MENTAL DISORDERS

FIFTH EDITION

DSM-5



AMERICAN PSYCHIATRIC ASSOCIATION

Child Affected by Parental Relationship Distress

William Bernet, MD, Marianne Z. Wamboldt, MD, William E. Narrow, MD, MPH

Objective: A new condition, “child affected by parental relationship distress” (CAPRD), was introduced in the *DSM-5*. A relational problem, CAPRD is defined in the chapter of the *DSM-5* under “Other Conditions That May Be a Focus of Clinical Attention.” The purpose of this article is to explain the usefulness of this new terminology.

Method: A brief review of the literature establishing that children are affected by parental relationship distress is presented. To elaborate on the clinical presentations of CAPRD, four common scenarios are described in more detail: children may react to parental intimate partner distress; to parental intimate partner violence; to acrimonious divorce; and to unfair disparagement of one parent by another. Reactions of the child may include the onset or exacerbation of psychological symptoms, somatic complaints, an internal loyalty conflict, and, in the extreme, parental alienation, leading to loss of a parent–child relationship.

Results: Since the definition of CAPRD in the *DSM-5* consists of only one sentence, the authors propose an

expanded explanation, clarifying that children may develop behavioral, cognitive, affective, and physical symptoms when they experience varying degrees of parental relationship distress, that is, intimate partner distress and intimate partner violence, which are defined with more specificity and reliability in the *DSM-5*.

Conclusion: CAPRD, like other relational problems, provides a way to define key relationship patterns that appear to lead to or exacerbate adverse mental health outcomes. It deserves the attention of clinicians who work with youth, as well as researchers assessing environmental inputs to common mental health problems.

Key words: child affected by parental relationship distress, intimate partner distress, intimate partner violence, loyalty conflict, parental alienation

J Am Acad Child Adolesc Psychiatry 2016;55(7):571–579.

ICD-11

International Classification of Diseases (11th Revision)

The screenshot displays the ICD-11 (Foundation) website interface. The top navigation bar includes links for [Register], [Log In], and [Last Update: Dec 29]. Below the navigation bar, there are tabs for [Advanced Search], [Foundation], [Linearizations], [Contributions], and [Info]. The main content area is divided into two panels. The left panel shows a hierarchical tree of ICD-11 categories, with 'Parental alienation' highlighted. The right panel provides detailed information for 'Parental alienation', including its Foundation ID, Parent(s), Description, and Exclusions.

ICD-11 (Foundation)

Search: [Advanced Search] Foundation Linearizations Contributions Info

Foundation ID: <http://id.who.int/icd/entity/1517928030>

Parental alienation

Parent(s)

- Caregiver-child relationship problem

Description

Parental alienation is the child's rejection of a parent without a good reason. This usually occurs in the context of high-conflict divorce. The child's rejection of one parent is usually encouraged by the preferred parent. Incorporation of this description does not indicate WHO endorsement or any sort of formal recognition. It has been added for the purposes of translation only.

Exclusions

- Parental estrangement ⇒

Left Panel Hierarchy:

- Problem associated with interactions with spouse or partner
- Problem associated with interpersonal interactions in childhood
 - Caregiver-child relationship problem
 - Caregiver-child relationship problem with current parent or caregiver
 - Caregiver-child relationship problem with former parent or caregiver
 - Parental alienation**
 - Parental estrangement
 - Loss of love relationship in childhood
 - Problems associated with absence, loss or death of others
 - Problems related to primary support group, including family circumstances
 - Problems associated with harmful or traumatic events
 - Problems associated with upbringing
 - Acquired absence of body structure
 - Limited function or disability of body organ or system
 - Difficulty or need for assistance with activities
- Codes for special purposes
- Supplementary Chapter Traditional Medicine Conditions - Module I
- Supplementary section for functioning assessment
- Extension Codes
- Special Views

Footer: Caveats

World Health Organization

ICD-11: The Global Standard for Diagnostic Health Information

The actual words, “parental alienation” and “parental estrangement,” are in the INDEX of ICD-11.

World Health Organization

QE52.0: *Caregiver-child relationship problem* = “substantial and sustained dissatisfaction within a caregiver-child relationship associated with significant disturbance in functioning.”

INDEX TERMS

- Parent-child relationship problem
- Parental alienation
- Parental estrangement

HISTORICAL DEBATE AND DISCUSSION

Debate and Discussion

Definition of parental alienation:

A child—usually one whose parents are engaged in a high-conflict separation or divorce—allies strongly with one parent (the preferred parent) and rejects a relationship with the other parent (the target parent) without legitimate justification.

Debate and Discussion

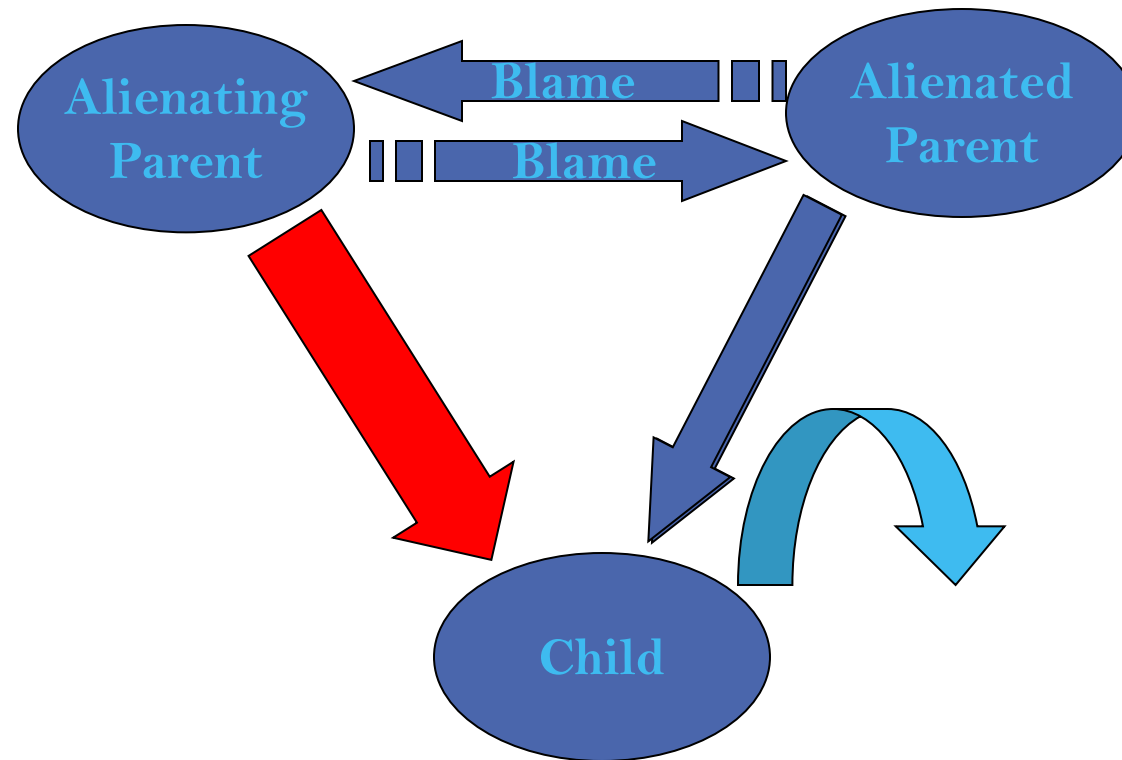
What are the causes of parental alienation?

What is the difference between alienation and estrangement?

ALIENATION = child rejects a parent without a good reason. The child's rejection is far out of proportion to anything the rejected parent has done.

ESTRANGEMENT = child rejects a parent for a good reason, such as history of abuse or neglect.

Causing PA is Child Maltreatment



Source: William Bernet, M.D.

Short-term Effects of Parental Alienation

Child escapes battleground between parents

Child resolves cognitive dissonance

Child becomes enmeshed with preferred parent

Child loses relationship with rejected parent

Long-term Effects of Parental Alienation

Behavioral Effects

- Child shuns alienated parent for years or a life-time
- Child repeats alienating behaviors in later adult relationships

Cognitive Effects

- Child fails to develop critical thinking
- Child experiences relationships as all good or all bad

Emotional Effects

- Chronic depression over loss of loved parent
- Chronic guilt over participating in rejection of parent

Parental Alienation is Preventable

Programs for Children of Divorce

- Help children enjoy both parents
- Help children stay out of the parents' disagreements

Programs for Divorcing Parents

- Avoid fighting in front of the children, over the children, and through the children
- Try to collaborate in raising children

Programs for Early or Mild Parental Alienation

- Parenting coordination with experienced counselor
- Increase parenting time with target parent

Debate and Discussion

The “Spectrum” of Parental Alienation:

Mild parental alienation

Moderate parental alienation

Severe parental alienation

Debate and Discussion

Interventions:

Mild PA: admonish, educate parents

Moderate PA: coaching and family therapy

Severe PA: remove the children from abusive home

Debate and Discussion

Diagnosis of parental alienation:

Four-Factor Model

vs.

Five-Factor Model

Four-Factor Model of Parental Alienation

Prior positive bond between child and rejected parent.

Absence of abuse/neglect by rejected parent.

Alienating behaviors manifested by preferred parent.

Eight behavioral manifestations of PA by the child.

Five-Factor Model of Parental Alienation

The child avoids or rejects a relationship with one of the parents.

Prior positive bond between child and rejected parent.

Absence of abuse/neglect by rejected parent.

Alienating behaviors manifested by preferred parent.

Eight behavioral manifestations of PA by the child.

Debate and Discussion

What about shared parenting?

Some professionals say shared parenting should be the default arrangement for child custody.

Debate and Discussion

What about shared parenting?

Some professionals say shared parenting should be the default arrangement for child custody.

Others are concerned that shared parenting may aggravate parental alienation.

CONSENSUS



Definition: “Parental Alienation”

A child—usually one whose parents are engaged in a high-conflict separation or divorce—allies strongly with one parent (the preferred parent) and rejects a relationship with the other parent (the target parent) without legitimate justification.

Lorandos, Bernet, and Sauber, *Parental Alienation: The Handbook for Mental Health and Legal Professionals*, 2013.

Dr. Amy Baker et al. (2011),
Brief Report on Parental Alienation Survey

Survey conducted at 2010 meeting of the Association of Family and Conciliation Courts (AFCC).

300 attendees completed survey regarding PA.

98% endorsed, “Do you think that some children are manipulated by one parent to irrationally and unjustifiably reject the other parent?”

Debate vs. Consensus

Consensus is driven by research and publication in books and journals.

Consensus should not be driven simply by **strongly held opinions**.

Debate vs. Consensus

Most practitioners and researchers on same page.

Most mental health and legal professionals accept basic definition of PA.

Soft skeptics: Agree that PA exists but have a different approach to solving the problem.

Hard skeptics: Naysayers.

Enough of the researchers and scientists....What
do the *Judges* think of the phenomenon of
Parental Alienation?

How have the family courts around the country defined “parental
alienation”?

What is “Parental Alienation”?

Example 1:

➤ Parental alienation is “[t]he process of one parent trying to undermine and destroy to varying degrees the relationship that the child has with the other parent.”

Michigan Court of Appeals *Meadows v. Meadows/Henderson*, No. 296056, 2010 WL 3814352, at *3 n.3 (Mich. Ct. App. Sept. 30, 2010))

What is “Parental Alienation”?

Example 2:

- Parental Alienation “is primarily a description of the psychological condition of [a] child.”
- “The essential feature of parental alienation is that a child...allies himself or herself strongly with one parent (the preferred parent) and rejects a relationship with the other parent (the alienated parent) without legitimate justification.”

Tennessee Court of Appeals (McClain v. McClain, 539 S.W.3d 170, 182 (2017))

What is “Parental Alienation”?

Example 3:

➤ Parental alienation ... requires (1) that the alleged alienating conduct, without any other legitimate justification, be directed by the favored parent, (2) with the intention of damaging the reputation of the other parent in the children’s eyes or which disregards a substantial possibility of causing such, (3) which proximately causes a diminished interest of the children in spending time with the non-favored parent and, (4) in fact, results in the children refusing to spend time with the targeted parent either in person, or via other forms of communication.”

New York Supreme Court (J.F. v. D.F., 61 Misc.3d 1226(A), 2018 N.Y. Slip Op. 51829(U))

Alienation versus *Estrangement*

- “Alienation and estrangement...are not interchangeable or synonymous concepts. The difference between estrangement and alienation resides in the presence vs absence of a **reasonable objective basis for a child’s severe and persistent rejection and denigration of a parent**. Rejection and denigration of a parent with a reasonable objective basis is estrangement; rejection and denigration without such basis is parental alienation.”

McClain v. McClain, 539 S.W.3d 170, 182 (2017) (Court of Appeals of Tennessee)

It's 2020...The Debate is Over

- “... there is no doubt that parental alienation exists.”
- Not a “gender war over the children” – “The Court rejects any such simplistic analysis.”

New York Supreme Court (J.F. v. D.F., 61 Misc.3d 1226(A), 2018 N.Y. Slip Op. 51829(U))

The phenomenon of PA is “well known”...

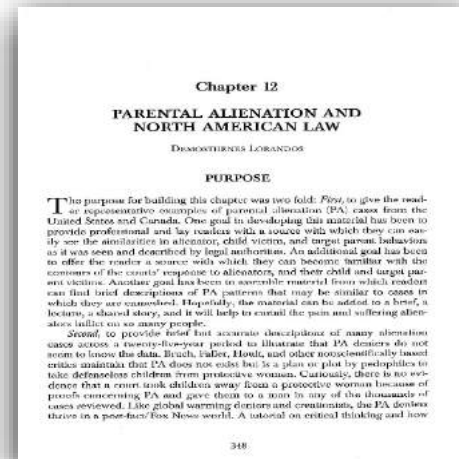
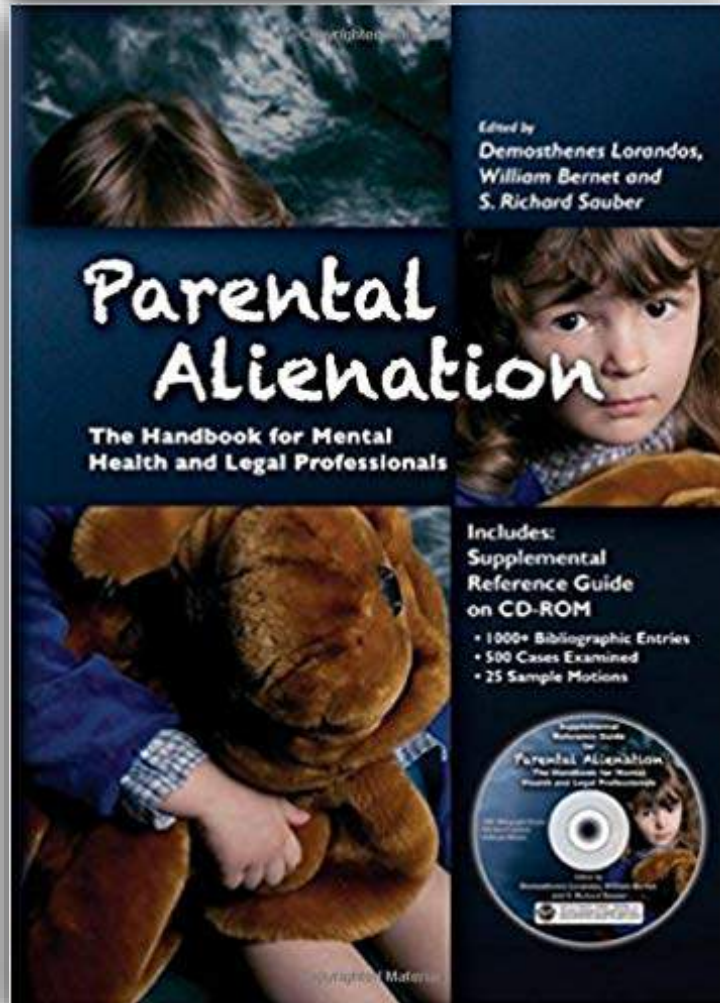
- “The phenomena of parental alienation are well recognized internationally and, sadly, are frequently alleged or encountered in custody and visitation litigation....The specific term ‘parental alienation’ does not yet appear as a psychiatric diagnosis in the official classification of the American Psychiatric Association, although its features commonly may be subsumed under one or more other diagnostic categories...”

McClain v. McClain, 539 S.W.3d 170, 182 (2017) (Court of Appeals of Tennessee)

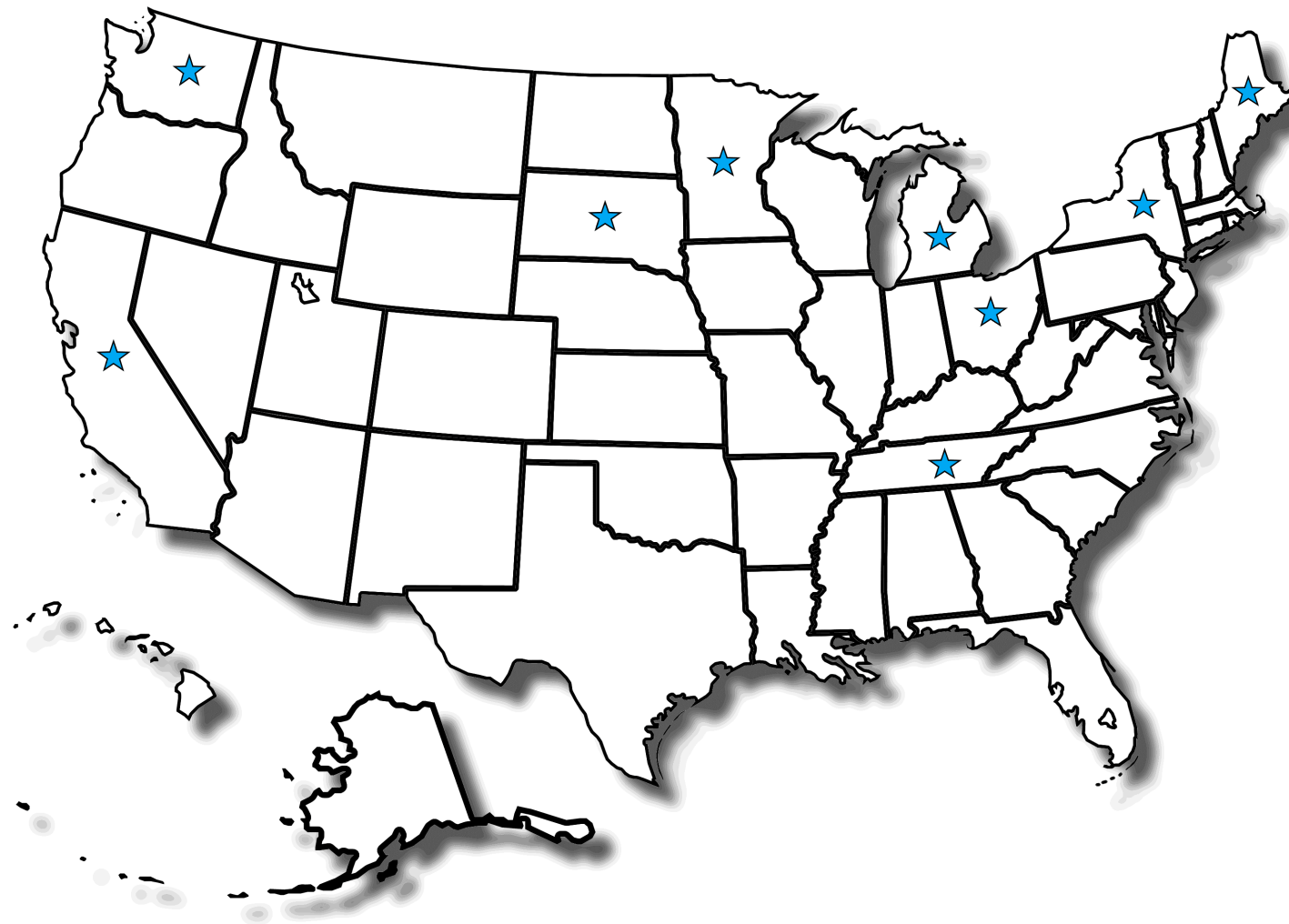
... and passes the *Daubert* gatekeeping

- Expert testimony on parental alienation “aided the court by providing a **counterintuitive** explanation as to the dynamics...present in [the] situation.”
- Expert testimony met the threshold level of reliability ~ *Daubert* standard

Supreme Judicial Court of Maine (*Bergin v Bergin*, __ A.3d __ (2019))
(2019 WL 3788326)



Some Recent Decisions

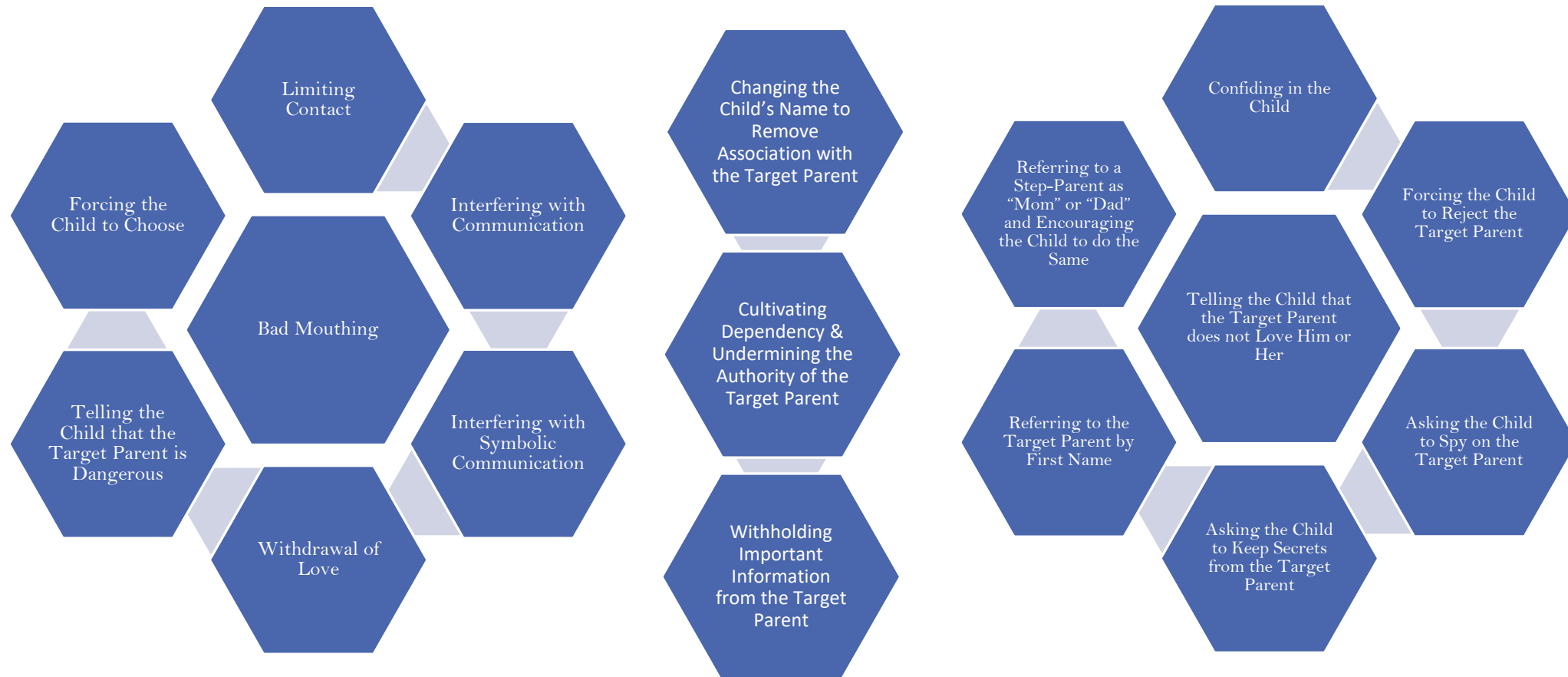


Some Recent Decisions

- *Matter of Marriage of Reichert*, No. 48783-7-II, 2018 WL 1393794, at *7 (**Wash** Ct App, March 20, 2018)
- *In re HM*, No. G057128, 2019 WL 3522043, at *26 (**Cal** Ct App, August 2, 2019)
- *Hiller v Hiller*, 919 NW2d 548, 558 (**SD**, 2018)
- *SternJohn v John*, No. A18-1838, 2019 WL 3000751, at *5 (**Minn** Ct App, July 1, 2019)
- *Delekta v Delekta*, No. 345006, 2019 WL 2711294, at *3 (**Mich** Ct App, June 27, 2019) Syndrome
- *Geary v Geary*, 27 NE3d 877, 895 (**Ohio** Ct App, 2015)
- *McClain v McClain*, 539 SW3d 170, 223 (**Tenn** Ct App, 2017)
- *Rodman v Friedman*, 33 AD3d 400, 401; 826 **NYS2d** 1, 2 (2006)
- *Bergin v Bergin*, No. HAN-19-77, 2019 WL 3788326, at *3 (**Me**, August 13, 2019)

FINDINGS OF FACT THAT LED TO COURT INTERVENTION:

BEHAVIORS OF AN ALIENATING PARENT



The Seventeen Behaviors of an Alienating Parent

Part One

1. Badmouthing the Target Parent
2. Limiting Contact with the Target Parent
3. Interfering with Communication with the Target Parent
4. Interfering with Symbolic Communication with the Target Parent
5. Withdrawal of Love
6. Telling the Child that the Target Parent is Dangerous
7. Forcing the Child to Choose Between Parents
8. Telling the Child that the Target Parent Does Not Love Him or Her
9. Confiding in the Child

The Seventeen Behaviors of an Alienating Parent

Part Two

10. Forcing the Child to Reject the Target Parent
11. Asking the Child to Spy on the Target Parent
12. Asking the Child to Keep Secrets from the Target Parent
13. Referring to the Target Parent by First Name
14. Referring to a Step-Parent as “Mom” or “Dad” and Encouraging the Child to do the Same
15. Withholding Medical, Academic, and Other Important Information from the Target Parent and/or Keeping the Target Parent’s Name Off Medical, Academic, and Other Relevant Documents
16. Changing the Child’s Name to Remove Association with the Target Parent
17. Cultivating Dependency on the Alienating Parent and/or Undermining the Authority of the Target Parent

Levels of Severity of Alienating Behaviors

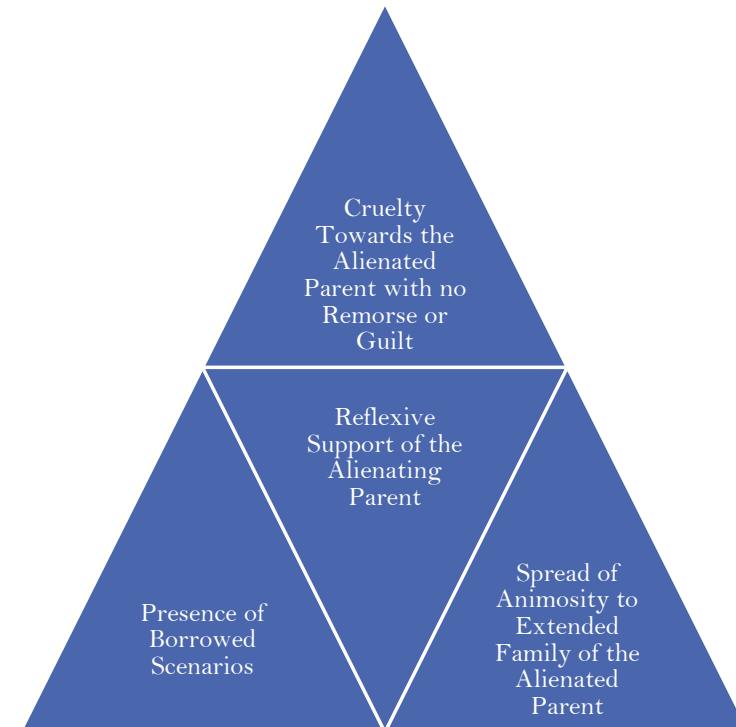
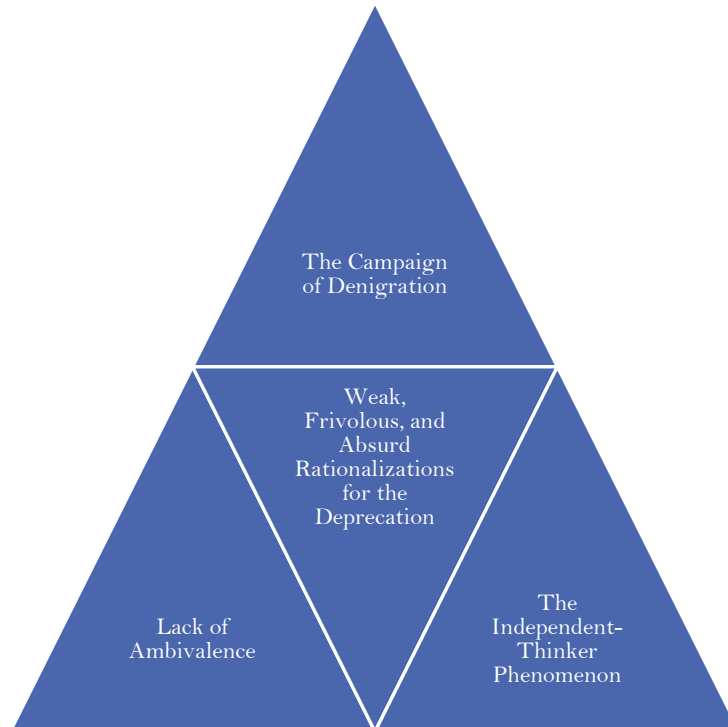
MILD: the preferred parent transiently or inadvertently makes statements that may undermine the child's relationship with the other parent.

MODERATE: the preferred parent purposefully tries to undermine the child's relationship with the other parent; the behavior improves with counseling.

SEVERE: the preferred parent is obsessed with the desire to destroy the child's relationship with the other parent; the behavior does not respond to typical outpatient counseling.

FINDINGS OF FACT THAT LED TO COURT INTERVENTION:

8 **SYMPTOMS** OF PARENTAL ALIENATION IN CHILDREN



The Eight Symptoms of Alienated Children

1. Campaign of Denigration
2. Weak, Frivolous, and Absurd Rationalizations for the Depreciation
3. **Lack of Ambivalence**
4. The Independent-Thinker Phenomenon
5. Cruelty Towards the Alienated Parent with no Remorse or Guilt
6. Reflexive Support of the Alienating Parent
7. Presence of Borrowed Scenarios
8. Spread of Animosity to Extended Family of the Alienated Parent

Levels of Severity of Parental Alienation

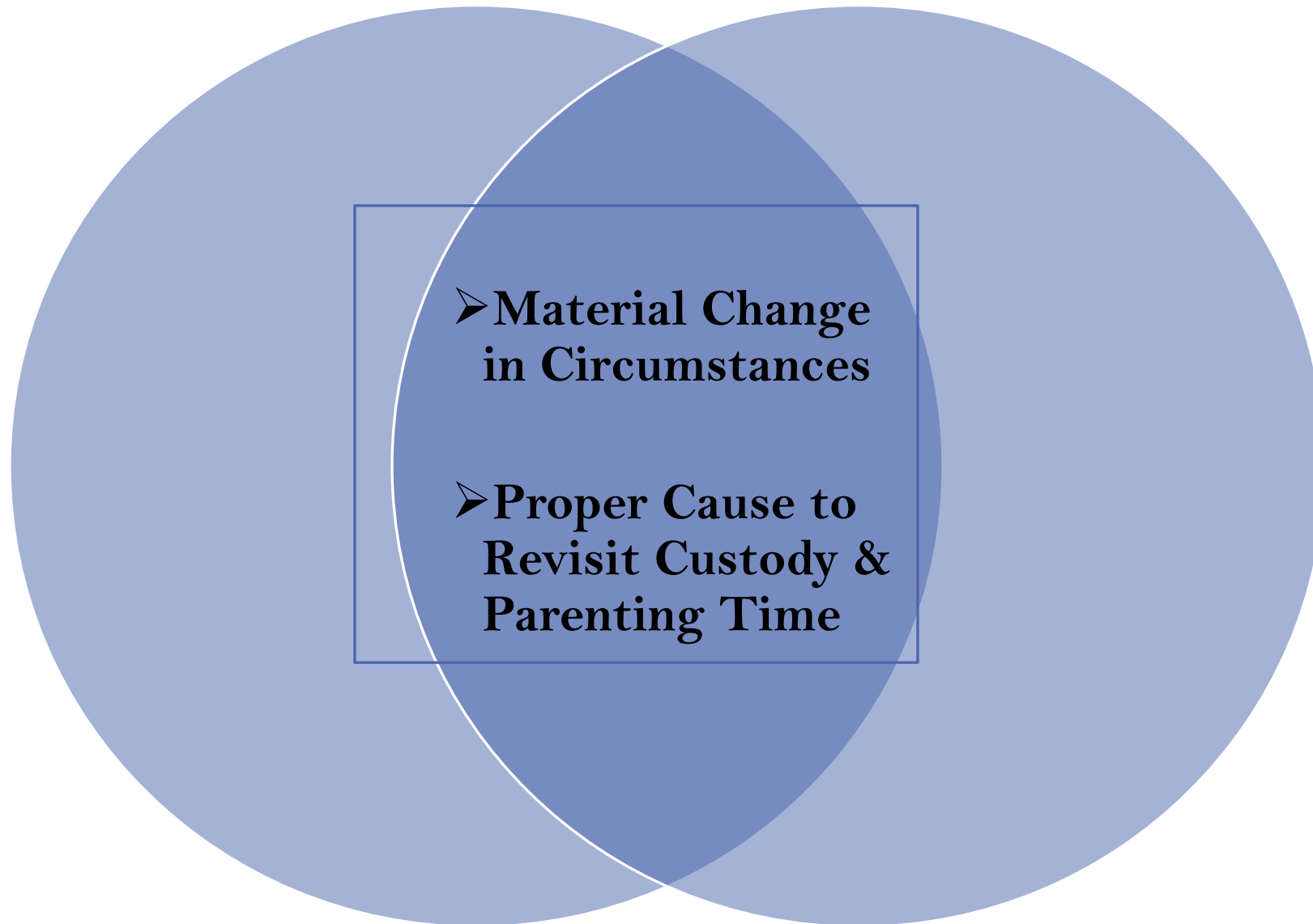
Severity is based on the behavior of the *child*.

MILD: child complains about spending time with rejected parent, but goes and has a good time.

MODERATE: child complains and is oppositional before and during time with rejected parent.

SEVERE: child adamantly refuses to see rejected parent, threatens to run away; child's hostile or indifferent behavior persists for months or years.

Parental Alienation = Material Change in Circumstances



Parental alienation may affect *at least* one best-interest factor.

See In re Gorcyca, 500 Mich. 588, 597 n 4; 902 N.W.2d 828 (2017).

Parental alienation is a “development that may rise to the level of a material change in circumstances” leading to modification of custody or parenting time.

McClain v. McClain, 539 S.W.3d 170, 189 (2017) (Court of Appeals of Tennessee)

Target Parent's Toolbox

- **CONTEMPT!**
- **Accountability ~ Violations of Court Orders**
- **Forensic examination ~ Electronic Evidence**
- **Production of “Therapy” Records**
- **Financial Sanctions ~ Attorney Fees**
- **Remedial / Make-up Parenting Time**
- **Petition for Change of Custody**



Email / Text Messages

- Expose the Alienating Behavior!
- *“Father: You have a right to be ugly to [Mother]...”*
- *“She is mentally ill. The bible tells us clearly that mental illness is a spiritual problem...”*
- *“You will never like her. Nobody likes her...”*
- Court: Father “Passive/Aggressive Liar”



Sanctions for **Criminal** Contempt!



- Incarceration / Jail
- Financial Sanctions
- Compulsory Participation in Psycho-educational Workshops
- “Self-Executing Fines” for any future violations



Trial Judges: Show us the Evidence, Not just Allegations

➤ "[T]he trial court found **no evidence** of parental alienation...."

Moir v. Moir, No. 323725, 2016 WL 555838, at *11 (Mich. Ct. App. Feb. 11, 2016), *appeal denied*, 500 Mich. 881 (2016).

➤ "[T]he court impliedly found no expert was necessary, because there was **no evidence** of parental alienation. .."

In re Marriage of Daniel, No. B174755, 2005 WL 1515414, at *4 (Cal. Ct. App. June 28, 2005).

➤ "**No evidence** was submitted that supports a conclusion that Mother engaged in parental alienation....the sole concern raised by the guardian ad litem was unsubstantiated by the evidence."

Maxwell v. Maxwell, 2008-Ohio-1324, 2008 WL 754861, at *5 (Ohio Ct. App. March 24, 2008).

“Judges are not cruel; they just get
used to things.”

– G. K. Chesterton, *On Tremendous Trifles*

Myths & Fallacies of Parental Alienation

Debunking Some Myths and Fallacies

#1 The term “Parental Alienation” is not found in DSM-5, therefore, it’s not real and is “junk science.”

DSM-5

DSM-5 has THREE specific diagnoses under which Parental Alienation may fall, albeit by different names:

(1) *Child affected by parental relationship distress* (CAPRD) (V61.29), which “should be used when the focus of clinical attention is the negative effects of parental relationship discord (e.g., high levels of conflict, distress, or disparagement) on a child in the family, including effects on the child’s mental or other medical disorders.”

DSM-5, pg. 716, 719 (5th ed. 2013); William Bernet, et. al., Child Affected by Parental Relationship Distress 55 J. of the Am. Acad. of Child and Adolescent Psychiatry 571-579 (2016).

DSM-5

(2) *Parent-child relational problem* (V61.20), which includes “negative attributions of the other’s intentions, hostility toward or scapegoating of the other, and unwarranted feelings of estrangement.”

DSM-5, pg. 715, 719 (5th ed. 2013); William Bernet, et. al., Child Affected by Parental Relationship Distress 55 J. of the Am. Acad. of Child and Adolescent Psychiatry 571-579 (2016).

DSM-5

(3) *Child psychological abuse* (995.51), which includes “harming / abandoning ... people or things that the child cares about.”

DSM-5, pg. 716, 719 (5th ed. 2013); William Bernet, et. al., Child Affected by Parental Relationship Distress 55 J. of the Am. Acad. of Child and Adolescent Psychiatry 571-579 (2016).

Smoke and Mirrors re: DSM-5

- The codes under which the concept of PA is included in DSM-5 are “V codes” and these are not “real” mental conditions. Nonsense! “V-code” simply means that there is a corresponding diagnosis in the ICD. In order to simplify “translation” from one system to the other, professionals use the same code of the diagnoses that are in both DSM and ICD.

- It is important to understand the difference between “mental conditions” and “mental disorders.” The former are relational problems that occur between two or more individuals, while the latter are entities that occur “inside” one individual.

See William Bernet, et. al., Child Affected by Parental Relationship Distress 55 J. of the Am. Acad. of Child and Adolescent Psychiatry 571-579 (2016).

Smoke and Mirrors re: DSM-5

- *You cannot “diagnose” Parental Alienation.*

It is absolutely acceptable to refer to either “diagnosis of PA” or “identification of PA.” Medical and mental-health professionals use both terms. Some people have this silly notion that the word “diagnosis” can only be used for terms that are in DSM or ICD. That rule is NOT stated anywhere in DSM or anywhere else that is authoritative.

- *Can you diagnose “Psychopathy”?*

As an illustration, the word “psychopathy” is not in DSM (the official term is antisocial). However, the term “psychopathy” is commonly used in professional writing and there is a validated checklist for the identification of psychopathy. No one would be criticized for making a “diagnosis” of “psychopathy.”

Diagnosis ~ Finding

- Courts routinely make a *finding* of the presence of parental alienation behaviors by relying on evidence that includes more than just an expert opinion.

For e.g., see:

The trial court “**found** plaintiff mother had **alienated** the child from defendant father...The court based its **finding that the mother had alienated the child** from the father not simply on the forensic report, but also on its in camera interview with the child, another forensic report, and numerous documents, interviews and court appearances.”

Rodman v. Friedman, 33 A.D.3d 400, 400-401 (2006) (N.Y. Slip. Op. 07264)

Diagnosis ~ Finding

- “The testimony of [Expert] alone did not establish parental alienation. The trial court specifically noted it was making a **finding of parental alienation** based on the ‘**totality of the evidence**,’ including the testimony of appellant and appellee....The trial court placed particular emphasis on the testimony of appellant with her conflicting statements and her admission that she lied under oath.”

Geary v. Geary, 27 N.E.3d 877 (2015) (Court of Appeals of Ohio)

Diagnosis ~ Finding

- You DO NOT need an expert report to make a finding of alienation as a primary causal factor in family dysfunction.
- You do not need an expert report to get a reversal of custody remedy.

***A.M. v C.H.*, 2019 ONCA 764 (Ontario Court of Appeals)**

Diagnosis ~ Finding

- At the end of the day, a trial judge is a finder of facts.
- Evidence of BEHAVIORS of an alienating parent are the key to obtaining the appropriate intervention
- Evidence of SYMPTOMS of an alienated child are the key to obtaining the proper relief
- BEST INTERESTS of the child is the controlling standard

Best Interest Factors

“Best interests of the child” means the sum total of the following factors to be considered, evaluated, and determined by the court:

- (a) The love, affection, and other emotional ties existing between the parties involved and the child.
- (b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.
- (c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

Michigan's Best Interest Factors

- (d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.
- (e) The permanence, as a family unit, of the existing or proposed custodial home or homes.
- (f) **The moral fitness of the parties involved.**
- (g) **The mental and physical health of the parties involved.**
- (h) The home, school, and community record of the child.

Michigan's Best Interest Factors

- (i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.
- (j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents. A court may not consider negatively for the purposes of this factor any reasonable action taken by a parent to protect a child or that parent from sexual assault or domestic violence by the child's other parent.**
- (k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.
- (l) Any other factor considered by the court to be relevant to a particular child custody dispute.

Presence of PA *ALONE* can lead to a custody trial

A parent's willful disregard of MCL 722.23(j) [the factor that is most relevant to PA] *alone* necessitates a child custody hearing.

McNutt v. McNutt, No. 328214, 2015 WL 8967327 (Mich Ct App Dec. 15, 2015); *Crain v. Schultz*, No. 286292, 2009 WL 387716 (Mich Ct App Feb. 17, 2009).

Debunking Some Myths and Fallacies

#2 Abuse allegations should always be assumed to be true.

“The fact that there is no evidence doesn’t mean it didn’t happen”

Presumed Guilty?

- Our adversarial system, for a good reason, has a presumption of innocence
- False allegations of “abuse” are not uncommon, especially in a case involving PA or Enmeshment
- “CPS investigator testified that **no evidence** substantiated plaintiff’s most recent allegations of domestic violence or abuse... [Mother had “called in 17 complaints between April of 2009 and April of 2018]...[Mother] began making **false accusations** concerning [Father] since at least July of 2013...and the record evidence supported that [Mother] continued to do so.”

Delekta v. Delekta, 2019 WL 2711294 (Mich. Court of Appeals) (Unpublished).

Presumed Guilty?

- Repeated false allegations of “abuse” by the Father: “We hold that substantial evidence supports the trial court’s finding, that [Father] had engaged in **abusive use of conflict** and **parental alienation**.”

In the Matter of the Marriage of Reichert v. Reichert-Randazzo, 2 Wash.App.2d 1063 (2018) (Unpublished)

- Repeated false allegations that lead to CPS or police investigations “are detrimental to [child] because they deprive him of a normal childhood, normal sibling relationships, and a normal relationship with [the targeted parent].”

In the Matter of the Marriage of Reichert v. Reichert-Randazzo, 2 Wash.App.2d 1063 (2018) (Unpublished)

Debunking Some Myths and Fallacies

#3 Children would not report abuse allegations that are not true.

Children can be coached or manipulated to report “abuse”

- “[T]he record amply supports the ... finding that mother has not only interfered with father’s parenting time but worked since the dissolution to alienate [child] from father. When father obtained a judicial remedy for mother’s refusal to bring [child] to scheduled parenting-time transfers, she employed other tactics. She first prompted a child-protection investigation, thereby depriving father access to the children. The abuse allegations were clouded by indications that **mother coached the children to report abuse** and were never substantiated. Mother next sought an OFP on behalf of the children, thereby depriving father of access to the children from December 2016 until December 2017, again without ever substantiating any of the underlying allegations....Mother used these proceedings and her position as the children’s sole caretaker to ‘stoke’ the children’s fear of father, ‘exacerbating the rift that exists between the children and [father]....**mother’s extreme interference and alienation constitute changed circumstances.**” – *Father was awarded sole custody.*

Sternjohn v. John, 2019 WL 3000751 (Court of Appeals of Minnesota, 2019) (Unpublished)

Peer-Reviewed Research Studies

- Elizabeth Ahern, et. al., *Young Children's Emerging Ability to Make False Statements*, 47 Developmental Psychol. (1) 61-66 (2011)
- Steven Ceci, et. al., *Repeatedly Thinking about Non-Events: Source Misattribution among Preschoolers*, 3 Consciousness and Cognition, 388 (1994)
- Quin Chrobak, et. al., *Inventing Stories: Forcing Witnesses to Fabricate Entire Fictitious Events Leads to Freely Reported False Memories*, 15 Psychonomic Bull. & Rev. 1190-1195 (2008)

Debunking Some Myths and Fallacies

#4 Children (and alienators) have “First Amendment rights” and “love cannot be coerced.”

A child does not have a “fundamental” or a “constitutional” right to reject a parent

- The “paramount consideration” in matters of custody and visitation is the BEST INTERESTS of the child. The child’s wish “are never controlling.” A trial judge must yield in all cases to what he or she considers to be the child’s best interests, regardless of the child’s personal preference.

Reynolds v. Reynolds, 109 N.C. App. 110, 112-113 (1993); *Clark v. Clark*, 294 N.C. 554, 576-77, 243 S.E.2d 129, 142 (1978).

- Smokescreen: *A child’s “constitutional right” to “freedom of intimate association”?*

Mother’s “sole contention...is that the order for visitation violates the Constitutional rights of the minor [child]. We find NO MERIT to the argument....” *Reynolds, supra*, at 112.

“We recognize that [the child] has expressed a desire not to visit her father. The trial court determined, however, based on findings of fact supported by the evidence in the record, that such visitation would be in her best interests.” *Reynolds, supra*, at 113.

A child does not have a “fundamental” or a “constitutional” right to reject a parent

- Family courts around the country focus on what’s in the best interests of a child, not just what a child “wants” or “wishes.” For e.g., see:

Preference of a minor child of one parent over the other as to custody, “while worthy of consideration, is not of controlling force, when the good of the child will be best served by a custodian not so preferred...the welfare of the minor children is the sole matter with which the court is concerned....Even the wishes of the children in such cases must yield to the determination of what is for their ultimate good.”

Rogich v. Rogich, 78 Idaho 156, 161-162 (1956).

It's not *me*, it's little Johnny who refuses to see the other parent: "I cannot 'force' my child to attend visitation or go to the mom / dad for parenting time."

Supreme Court of South Dakota:

- "[Father] challenges the circuit court's determination that he had the ability to comply with the visitation order, arguing that the [child] was a strong-willed teenager who unilaterally refused to attend visitation. Though [Father] testified that he was unable to physically force [child] to attend visits...the circuit court's focus was less upon the actual act of transporting [child] to her mother's home and more upon the parental effort necessary to prepare [child] for the transition plan...**the brinkmanship associated with getting [child] to go to the visits may have been obviated had [Father] effectively communicated the plan to [child], stressed his assent, and warned of consequences should she disobey.** The court also assessed [Father's] credibility, referring to him as a 'passive/aggressive liar.' In the court's view, **[Father] was duplicitous and had the ability to comply with the stipulated visitation order.**"

Hiller v. Hiller, 919 N.W.2d 548, 554-555 (S.D., 2018)

Debunking Some Myths and Fallacies

#5 Parental Alienation theory cannot pass through the *Daubert* or *Frye* gatekeeping tests.
It's inadmissible expert testimony.

What is the Standard?

DAUBERT TRILOGY

Daubert

Joiner

Kumho Tire



Setting the stage to reject
Junk Science

DAUBERT

Daubert v. Merrell Dow Pharmaceuticals, Inc, 509 US 579;
113 S Ct 2786 (1993)

- Trial court is the gatekeeper who must make a preliminary assessment as to whether the **reasoning** and **methodology** proffered are **scientifically valid**.

DAUBERT

Daubert v. Merrell Dow Pharmaceuticals, Inc, 509 US 579;
113 S Ct 2786 (1993)

- Trial court must ensure that the proffered testimony is relevant and reliable with a **focus solely on principles and methodology**.

DAUBERT

Daubert v. Merrell Dow Pharmaceuticals, Inc, 509 US 579;
113 S Ct 2786 (1993)

- Evidentiary admissibility shall be based upon reliability determined by the degree of scientific **validity**

DAUBERT

Daubert v. Merrell Dow Pharmaceuticals, Inc, 509 US 579;
113 S Ct 2786 (1993)

- Scientific methodology means generating hypotheses and testing them to see if they can be falsified. Has the technique been “tested” is the key question.

DAUBERT

Daubert v. Merrell Dow Pharmaceuticals, Inc, 509 US 579;
113 S Ct 2786 (1993)

- Scientific knowledge is that which is derived from the **empiricism** of the scientific method.

DAUBERT

Daubert v. Merrell Dow Pharmaceuticals, Inc, 509 US 579;
113 S Ct 2786 (1993)

- Experts must be grounded in the methods and procedures of science.

DAUBERT

Daubert v. Merrell Dow Pharmaceuticals, Inc, 509 US 579;
113 S Ct 2786 (1993)

- Experts must have a reliable basis in the knowledge and experience of his discipline.

JOINER

General Elec Co v. Joiner, 522 US136; 118 S.Ct 512 (1997)

- Trial court must be free to apply **validity and reliability analysis** unless actions constitute an abuse of discretion.

JOINER

General Elec Co v. Joiner, 522 US136; 118 S.Ct 512 (1997)

- Experts' conclusions and methodology are not entirely distinct from one another.

JOINER

General Elec Co v. Joiner, 522 US136; 118 S.Ct 512 (1997)

- Experts must have a more rigorous connection between underlying data and conclusions than merely their own “ipse dixit”.

KUMHO TIRE

Kumho Tire Company, Ltd. V. Carmichael, 526 U.S. 137; 119 S.Ct. 1167 (1999)

- Trial Court must have considerable leeway in deciding whether the proposed testimony **and the proposed expert** is reliable.

KUMHO TIRE

Kumho Tire Company, Ltd. V. Carmichael, 526 U.S. 137; 119 S.Ct. 1167 (1999)

- Trial court must determine *both* the **validity of the expert's qualifications** *and* the **reliability of the proposed testimony**.

KUMHO TIRE

Kumho Tire Company, Ltd. V. Carmichael, 526 U.S. 137; 119 S.Ct. 1167 (1999)

- Experts must demonstrate a valid connection to the pertinent facts as a precondition to admissibility.

KUMHO TIRE

Kumho Tire Company, Ltd. V. Carmichael, 526 U.S. 137; 119 S.Ct. 1167 (1999)

- Experts, whether basing testimony on professional studies or personal experience, must employ in the courtroom the same level of **intellectual rigor** that characterizes the practice of an expert in the relevant field.

KUMHO TIRE

Kumho Tire Company, Ltd. V. Carmichael, 526 U.S. 137, 152;
119 S.Ct. 1167 (1999)

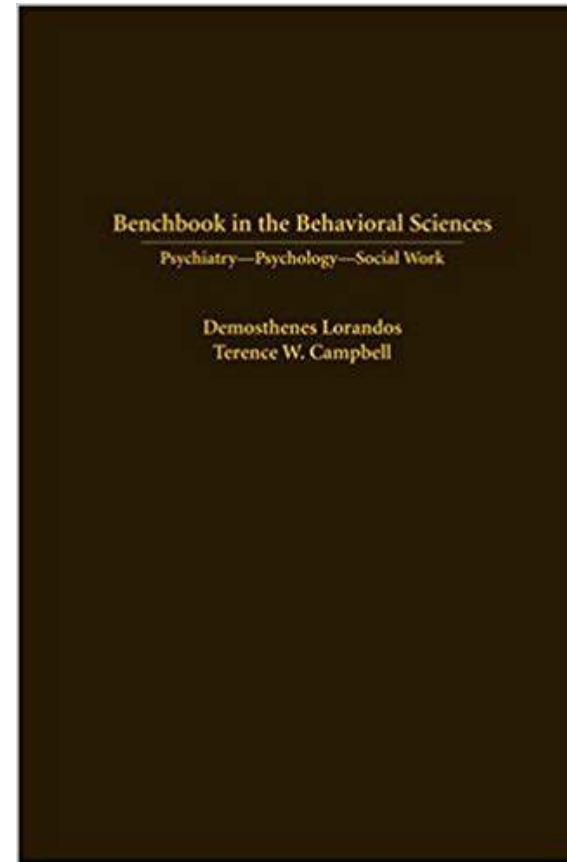
■ Thus, while a scientist must ground his opinion in the reasoning and methodology of science, a professional from a less scientific discipline may still qualify as an expert from their “professional studies or personal experience” in that field.

What is the Court's Decision Process?

Let's break the court's decision-making process down according to the law, the cases and the court rules.

Benchbook in the Behavioral Sciences

A very helpful resource:



Benchbook in the Behavioral Sciences

Decisional Template for Expert Testimony

FIRST **Make A Determination of Helpfulness:**

“If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue....”

Require an *Offer of Proof* or a *Rule 26 (a) (2)* statement

Conduct a Rule 104 analysis of relevancy considering materiality and probative value

Conduct a Rule 403 analysis of probative value vs. countervailing reasons for exclusion

If “NO” move on to other witnesses →

If “YES” continue



Benchbook in the Behavioral Sciences

SECOND Make A Determination of Expert Qualifications:

“...a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise...”

Require an *Offer of Proof* or a *voir dire* analysis of the proposed expert’s knowledge, skill, experience, training, or education

If “NO” move on to other witnesses→

If “YES” rule that the witness qualifies as an expert and continue



Benchbook in the Behavioral Sciences

THIRD Make A Determination of Reliability – *In Three Parts:*

“...if (1) the testimony is based on sufficient facts or data...”

THIS IS A QUANTITATIVE ANALYSIS

Require an *Offer of Proof* or conduct a *Daubert hearing* and determine the identity and quantum of the facts and/or data the proposed expert has relied upon

If “NO” ask:

“Can the factual basis or the data upon which the expert’s proposed testimony is based be significantly improved?”

If “NO” move on to other witnesses

If “YES” determine the amount of time allowable before re-assessment if any and continue↓

If “YES” or once a sufficiency determination of the basis of the proposed testimony has been made, continue↓

Benchbook in the Behavioral Sciences

THIRD Make A Determination of Reliability – *In Three Parts:*

“...(2) the testimony is the product of reliable principles and methods.”

THIS IS A QUALITATIVE ANALYSIS

Require an *Offer of Proof* or conduct a *Daubert hearing* and determine the validity and reliability of the principles and methodology the proposed expert has utilized

If “NO” move on to other witnesses →

If “YES” continue ↓

Benchbook in the Behavioral Sciences

THIRD Make A Determination of Reliability – *In Three Parts*:

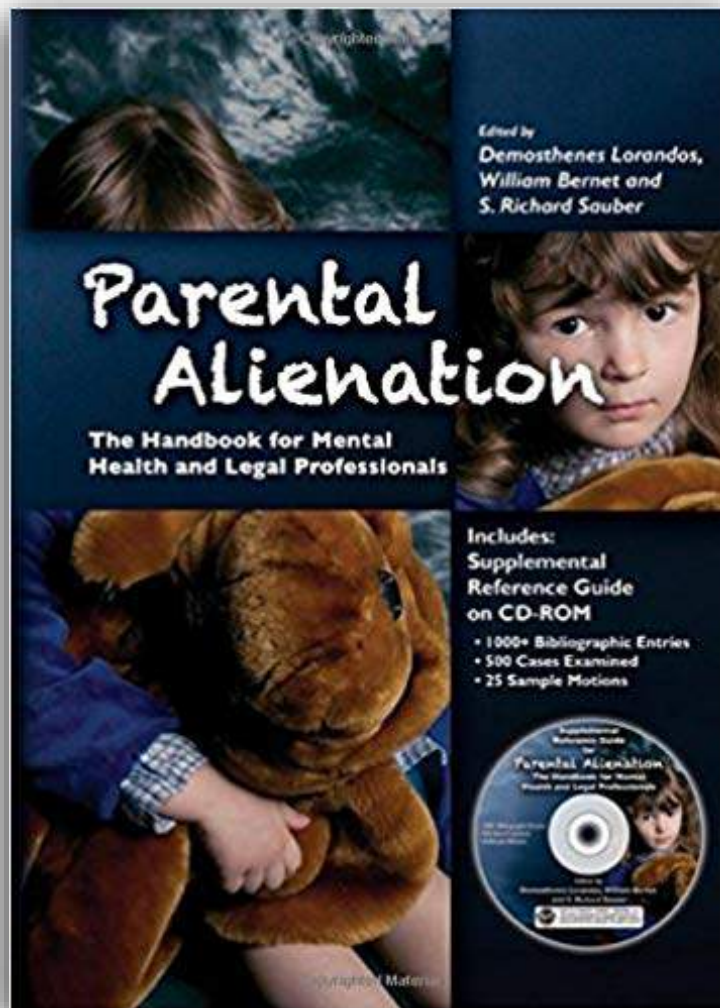
“...and (3) the witness has applied the principles and methods reliably to the facts of the case.”

THIS IS A “FIT” ANALYSIS

Require an *Offer of Proof* or conduct a *Daubert hearing* and determine the validity and reliability of the “fit” of the proposed expert’s conclusions to the reliability criteria and the facts of the case

If “NO” move on to other witnesses →

If “YES” rule that the proposed testimony is ADMISSIBLE



Chapter 11

PARENTAL ALIENATION RESEARCH AND THE *DAUBERT* STANDARDS

AMY J. L. BAKER

Case Example

Mr. and Mrs. X divorced when Mrs. X was pregnant with the couple's fifth child. Extensive documents indicate that since the birth of their first child, Mr. X had been an involved and active father, teaching his children academic subjects while they were homeschooled as well as actively encouraging their various extra-curricular activities (piano lessons, skiing, gymnastics, baseball, and so forth). At the onset of the marital dissolution, Mrs. X, according to numerous documents, engaged in a series of behaviors designed to undermine the children's confidence in their father and interfere with his contact with them (i.e., making a missing children's report while the children were with their father during his parenting time). Over a dozen child abuse claims were filed against him, none of which were indicated or founded. Ironically, it was on her watch that the family's youngest child nearly drowned, and it was during her parenting time that she abused drugs, using child support payments to cover her weekend drug habit. Once she remarried, she used her new husband's name on school forms and began to schedule competing activities for the children during the time they were supposed to be with their father. Although Mr. X was interpersonally intense, ascribed to unorthodox political conspiracy theories, and was a congregant at a church of what some might consider a fringe sect of the Catholic faith, he was never found to be abusive or neglectful of his children. After ten years of concerted campaigning on the part of Mrs. X and her new husband, however, the children came to vehemently reject their father, refusing any visitation or contact with him whatsoever. Despite a compelling and PAS-in-

Table 11.1
OVERVIEW OF EMPIRICAL STUDIES IN
THE FIELD OF PA STRATEGIES OR PAS

	Study 1	Study 2
Reference	Baker, A. J. L. (2010)	Baker, A. J. L. (2007a)
Overview	252 adults completed measures of psychological maltreatment as well as responded to a single item regarding one parent trying to turn them against the other parent	40 adults were interviewed about their experiences growing up. Selection of sample was based on response to flyer asking for adults who—when they were children—had been turned against one parent by the other parent.
Construct	PA strategies	PA strategies
Hypotheses	Respondents who endorsed the item would have statistically significantly higher scores on measures of psychological maltreatment.	Research questions: (1) Did anyone self-identify as having been turned against one parent by the other? (2) What effects did they perceive this to have? (3) What parental strategies did they identify as affecting them?
Falsifiable	If none of the respondents had endorsed the item or if no statistical associations between PA strategies and psychological maltreatment.	If no one had responded to flyers or if all who had responded reported that the experience of alienation had not negatively affected them.
Measure Validity	Concurrent validity of the item in that scores on all measures of psychological maltreatment were statistically significantly higher for those who endorsed the "tried to turn" item than for those who did not.	Validity of construct in that the findings were consistent with theory regarding presence of PA strategies and impact of alienation on functioning.
Measure Reliability	N/A, PA strategies measured with a single item.	N/A, qualitative data
Error Rate	N/A for the measure but all effects were significant at $p < .05$ or better.	N/A
Design Validity	No threats although all data are self-report and retrospective.	No obvious flaws, although all data are self-report and retrospective and qualitative data coded by author.
Peer Review	<i>Journal of Divorce & Remarriage</i>	Book published by W. W. Norton. Articles published by <i>American Journal of Family Therapy</i> , <i>Cultic Studies Review</i> , and <i>American Journal of Forensic Psychology</i> .

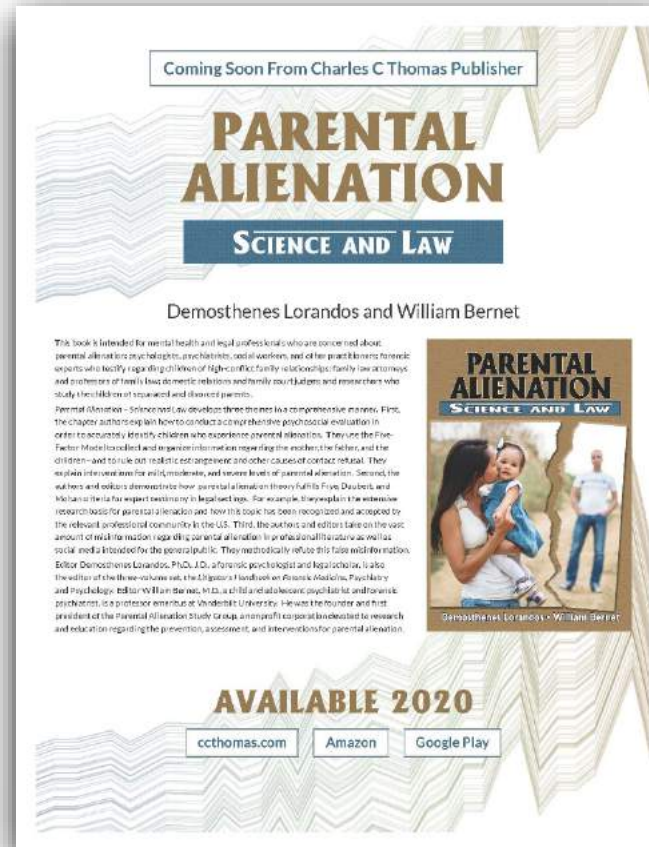
continued

Table 11.1—Continued

	Study 3	Study 4
Reference	Baker, A. J. L. (2007b)	Baker, A. J. L. & Ben Ami, N. (2011)
Overview	106 custody evaluators rated how possible they thought it was for one parent to turn a child against the other parent.	118 adult children of divorce completed the Baker Strategies Questionnaire (BSQ) along with standardized measures of self-esteem, substance abuse, self-sufficiency, psychological maltreatment, and attachment style.
Construct	PAS	PA strategies
Hypotheses	Research questions: (1) What proportion of custody evaluators endorsed the concept of PAS? (1) What predicted their endorsement?	Scores on the BSQ would be statistically significantly associated with identified outcomes.
Falsifiable	If none of the evaluators had endorsed the concept of PAS?	If none of the respondents had endorsed the items on the BSQ.
Measure	Item had face validity. Data demonstrated validity of the construct in that 100% of sample endorsed the statement that it was somewhat or very much possible for a parent to turn a child against the other parent.	Content validity of the BSQ in that it matched the content identified in other studies of PA strategies. Concurrent validity of the BSQ measure and the construct of PA strategies established in that scores on the BSQ measure and the construct of PA strategies established in that scores on the BSQ were statistically significantly correlated with psychological maltreatment, self-sufficiency, and self-esteem that was associated with depression and attachment.
Measure Reliability	N/A, a single item	Internal reliability established via Cronbach's alpha of BSQ of .96.
Error Rate	N/A for the measure but all effects were significant at $p < .05$ or better.	N/A for the measure, but all effects were significant at $p < .05$ or better.
Design Validity	No threats to internal validity	No threats although all data are self-report and retrospective.
Peer Review	<i>American Journal of Family Therapy</i>	<i>Journal of Divorce & Remarriage</i>

Forthcoming Publication in 2020

- Chapter 6, Recognition of Parental Alienation by Professional Organizations (Frye Admissibility)
- Chapter 8, Admissibility of Construct (Daubert Admissibility)
- Chapter 10, The Importance of *Voir Dire* in High-Conflict Family Law Cases



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Number of Parental Alienation Cases in the United States, 1985-2018

Year 1985 1990 1995 2000 2005 2010 2015 2018

Number of Cases 0 20 40 60 80 100 120 140 160 180 200 220 240 260 280 300 320 340 360 380 400 420 440 460 480 500 520 540 560 580 600 620 640 660 680 700 720 740 760 780 800 820 840 860 880 900 920 940 960 980 1000 1020 1040 1060 1080 1100 1120 1140 1160 1180 1200 1220 1240 1260 1280 1300 1320 1340 1360 1380 1400 1420 1440 1460 1480 1500 1520 1540 1560 1580 1600 1620 1640 1660 1680 1700 1720 1740 1760 1780 1800 1820 1840 1860 1880 1900 1920 1940 1960 1980 2000 2020 2040 2060 2080 2100 2120 2140 2160 2180 2200 2220 2240 2260 2280 2300 2320 2340 2360 2380 2400 2420 2440 2460 2480 2500 2520 2540 2560 2580 2600 2620 2640 2660 2680 2700 2720 2740 2760 2780 2800 2820 2840 2860 2880 2900 2920 2940 2960 2980 3000 3020 3040 3060 3080 3100 3120 3140 3160 3180 3200 3220 3240 3260 3280 3300 3320 3340 3360 3380 3400 3420 3440 3460 3480 3500 3520 3540 3560 3580 3600 3620 3640 3660 3680 3700 3720 3740 3760 3780 3800 3820 3840 3860 3880 3900 3920 3940 3960 3980 4000 4020 4040 4060 4080 4100 4120 4140 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Some helpful cases:

- *Hendren v. Lee*, No. 05D – 1313DV1, *Law Wkly.* No. 15-0001-12 (Middlesex Co., Mass. Probate & Family Court 2012)
- *Mastrangelo v. Mastrangelo*, No. 054012782S, 2012 WL 6901161, at *3 (Conn. Super. Ct. Dec. 20, 2012)
- *In re Marriage of Koenig*, No. 14-16-00319, 2017 WL 2704081, at *3, 5 (Tex. Ct. App. Jun. 22, 2017)
- *J.H. v. J.D.*, No. 16-33191, 2017 WL 4403331, at *2 (Castle Co., Del. Fam. Ct. Aug. 29, 2017)
- *Bergin v Bergin*, __ A.3d __, 2019 WL 3788326, (Supreme Judicial Court of Maine)

Debunking Some Myths and Fallacies

#6 Parental Alienation is a tool that is used against women by men.

PA is not a “gender war over the children” – “The Court rejects any such simplistic analysis.”

New York Supreme Court (J.F. v. D.F., 61 Misc.3d 1226(A), 2018 N.Y. Slip Op. 51829(U))

PA is a form of Family Violence

Parental alienating behaviors are a form of family violence that have serious consequences for children and families.

Jennifer Harman, et. al., *Parental Alienating Behaviors: An Unacknowledged Form of Family Violence*, Psychological Bulletin, 2018, Vol. 144, No. 12, 1275-1299

Debunking Some Myths and Fallacies

#7 Proponents of Parental Alienation are affluent, white litigants who have \$\$\$ to engage in scorched earth litigation.

Debunking Some Myths and Fallacies

#8 Each parent contributes equally to a child's alienation ~ **“High Conflict”** model

Richard Warshak, Ten Parental Alienation Fallacies That Compromise Decisions in Court and in Therapy, Professional Psychology: Research and Practice, 2015

Richard Warshak, Ten Parental Alienation Fallacies That Compromise Decisions in Court and in Therapy, Professional Psychology: Research and Practice, 2015

- Scientific studies leave “no doubt that the attitudes and behaviors of the parent with whom the child appears to be aligned are a key element in understanding the genesis of the problem.”
- “Based on their study of 1000 custody disputes, Clawar and Rivlin (2013) identify the favored parent’s programming as the primary dynamic behind a child’s alienation, and they regard such programming as psychologically abusive.”
- “It would be no more fitting to assume that an alienated mother is equally responsible for her children’s rejection of her than it would be to hold a mother equally responsible for her husband’s physical abuse of the children.”
- In some cases, children may have good reasons for feeling disillusioned with the rejected parent, but the favored parent eagerly fans the flames of negative feelings.

Richard Warshak, Ten Parental Alienation Fallacies That Compromise Decisions in Court and in Therapy, Professional Psychology: Research and Practice, 2015

- Evaluators who mistake a rejected parent's reaction to alienation or cite aspects of the parent's personality or behavior that the children complain about, such as using the video games too much or not being involved enough attention to the children's soccer games, without considering that this parental behavior had not previously undermined the children's love and respect for the parent risk falling prey to the fallacy of the "High Conflict" model.
- Ask the question: **What's the base line?**

Debunking Some Myths and Fallacies

#9 Rejecting a parent is a short-term healthy coping mechanism

Richard Warshak, Ten Parental Alienation Fallacies That Compromise Decisions in Court and in Therapy, Professional Psychology: Research and Practice, 2015

Research demonstrates that “early intervention and rapid enforcement of court ordered parent-child contacts can help prevent a child’s avoidance of a parent from hardening into a long-term estranged relationship, especially when avoidance is encouraged and supported by the other parent.”

Richard Warshak, Ten Parental Alienation Fallacies That Compromise Decisions in Court and in Therapy, Professional Psychology: Research and Practice, 2015

Debunking Some Myths and Fallacies

#10 “Parenting is a privilege not a legal right”
and courts have no right to interfere.

A parent's right to custody must be “balanced against the state's need [and power] to determine the best interests of the child.”

See Pater v. Pater, 588 N.E.2d 794, 798 (Ohio 1992); *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984). *See also In re Estate of S.T.T.*, 144 P.3d 1083, 1088 (Utah 2006).

Courts not only have a right to “interfere,” but are mandated to intervene to protect a child's best interests, which is typically a multi-factor test.

See, e.g., Schaeffer-Mathis Schaeffer v. Mathis, 407 P.3d 485, 492-493 (Alaska 2017).

Evidence of Parental Alienation justifies ignoring an alienated child's preference and a custody award against the alienating parent in order to protect the child's best interests.

See, e.g., Schaeffer-Mathis Schaeffer v. Mathis, 407 P.3d 485, 492-493 (Alaska 2017); *Wolt v. Wolt*, 778 N.W.2d 786, 793 (N.D. 2010); *Stern v. Stern*, 758 N.Y.S.2d 155, 155 (N.Y. App. Div. 2003); *Price v. Price*, 611 N.W.2d 425, 434-435 (S.D. 2000)

Courts can and should interfere in PA cases

“...parental alienation is a form of emotional abuse that should not be tolerated.”

McClain v. McClain, 539 S.W.3d 170 (2017) (Court of Appeals of Tennessee)

“...parental alienation can cause a child lifelong suffering.”

In re H.M., 2019 WL 3522043 (Court of Appeal, California) (Unpublished)

The Road Ahead...

Education of Professionals

Education of mental health professionals regarding parental alienation ...

In Lafayette, Louisiana, the Better Options Initiative and the University of Louisiana have created a course for graduate students that features parental alienation.

Education of CPS workers

Education of child protection workers that causing parental alienation is child abuse ...

PASG member Ron Berglas has worked with members of the California Assembly to propose legislation, that parental alienation should be considered a form a child abuse and taught to licensed clinicians.

Reform the System

Family law should change from an adversarial system to structured family mediation ...

In Washington, D.C., PASG member Dana Richard is promoting the recommendation of the 2019 Conference of Chief Justices to that effect.

Early Intervention

Courts should identify and address parental alienation when the severity is mild, before the pathology becomes entrenched ...

In Houston, Texas, PASG members Mary Alvarez and Christine Turner have developed Resettling the Family, which conducts research on mild/moderate parent rejection.

Understand the Counterintuitive Feature of PA

Prove the basic counterintuitive feature of PA, that abused children want to be with their abusive parents while alienated children (who were never abused) strongly reject a loving parent ...

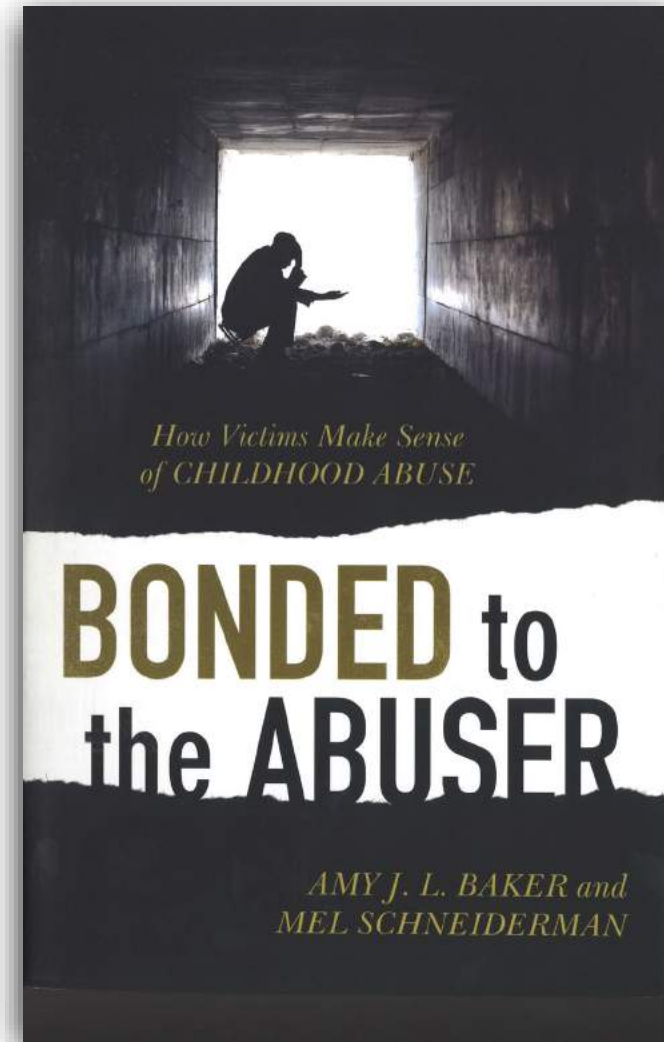
First part: research of Baker and colleagues

Second part: research of Bernet and colleagues

Baker and
Schneiderman

2015

Research shows that
abused children want to
be with their abusive
parents.



If you are concerned about parental alienation or
are interested in obtaining more information about
PA, join ...

Parental Alienation Study Group

www.pasg.info

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PARENTAL ALIENATION: REMEDIES

(Part Two of a Two-Part Series)

By ASHISH S. JOSHI

Parental alienation is a declaration of war by one parent against the other. The goal is clear: complete and utter annihilation of the target parent's relationship with the child. The behaviors that lead to alienation have become a pervasive aspect of divorce litigation.¹ Courts around the country, including Michigan², are increasingly showing concern about a parent's alienating behaviors, and where appropriate, have intervened. At times, the alienating parent does not realize that he or she is doing it. As Judge Michele Lowrance, of Cook County, Illinois³ recalled:

One day in court, a mother was seeking an increase in child support from her former husband. The father testified that his income had declined dramatically. After the case was over, I was riding down the elevator with the mother and the parties' teenage daughter. They did not notice I was there or did not recognize me out of my black robe. The mother was sharing details of the case with the daughter, as I would not let the daughter come into the courtroom. The mother was telling her what a liar and manipulator her father was, fully expecting the daughter to agree. I doubted this child would ever be able to hear her father's side of the story. Even if the father was lying, I wondered why the mother could not share her frustration with her sister, her neighbor, or even the cashier at the corner store; anyone but the child. I was saddened because I knew that sharing this information with the daughter might forever affect the way the girl viewed her father and ultimately how she viewed men in general. Would they all be liars and manipulators to her? The daughter had no way to defend her trust in her father against this onslaught; she would certainly question it and probably cease to rely on it. Could the mother be sure the daughter would heal from believing her father is manipulative, uncaring, and a liar? I don't believe the mother considered the long-term effects. If she had, would she have intentionally hurt her daughter?⁴

Enmeshment—lack of proper boundary between a parent and the child—is simply one behavior of the alienation dynamic. The alienating parent has difficulty in separating himself

from the child, and thinks of himself and the child as a “team.” In one case of severe alienation, where I was part of the legal team that represented the target parent, the alienating parent freely discussed her pre- and post-divorce extramarital affairs with her teenage children. After an evidentiary hearing on parental alienation, the trial judge found:

These boundary issues extended to [the mother's] discussion with the children of her pre- and post-divorce extramarital affairs. [She] testified that she... had discussed these matters with the children as a way of ‘taking that away from him.’ When asked about it on cross-examination, [the mother] admitted these disclosures, but denied that it denigrated [the father] to be talking with the children about her search for a ‘strong man.’...[S]he wanted [the children] to know ‘why I built relationships with other men while still married to [the father]’ and that their son correctly reported to the counselor that ‘she was looking for love.’ [The father] testified that he had never discussed such matters with the children.⁵

The alienator was sentenced to jail. The court suspended her sentence provided she complied with specific court orders that were designed to contain, and hopefully, modify her alienating behaviors.⁶ These cases are tough. While all of the professionals involved in the court system – lawyers, case evaluators, guardians ad litem, therapists – face a challenge when dealing with these cases, perhaps the toughest challenge faced is the one faced by the fact finder and the decision maker: the judge. As Judge Lowrance observed: “[parental alienation] cases are difficult, and...judges often have no love for them.”⁷ Judges find that these cases take a life of their own and things get “curiouser and curiouser” as the case unwinds.⁸ Why? First, some litigants who do not really understand the concept of alienation often misuse it in court.⁹ There is a difference between mental disorders such as oppositional disorder and actual parental alienation. Then there is the problem of affect: an alienator comes to believe what he or she is saying, and their presentation appears to be authentic. On top of it, the children – sometimes adolescents who appear to be doing very well in other spheres of their lives – often support the alienator by telling the judge of their hatred for the target par-

ent. And last but not least, when judges try to do what they believe might help the situation – say traditional therapeutic intervention – it does not work and they get exasperated with both parties (and sometimes the therapist too). It is not just maddening; at times it is surreal.

Fortunately, there is good research available that courts can turn to for the help that they need in these cases. As a starting point, it would do good to shatter some misperceptions that the bench (and the bar) too often believe. Judge Lowrance identified some of the misperceptions that courts commonly harbor about parental alienation¹⁰:

1. Parental alienation is not in the DSM-IV (or DSM-V) so it cannot be real.
2. It is too confusing to tell the difference between alienation and estrangement.
3. It is too difficult to test the credibility of children's statements.
4. Traditional therapy is the answer for these alienated relationships.
5. There is no reason for these cases to be fast tracked.
6. Alienation usually resolves itself if the target parent does what they are supposed to do.
7. Supervised access is an appropriate tool to use to alleviate the fears of an anxiety-ridden parent.

She also advised caution when judges are asked to order supervised visitation:

Alienators use fear. They say things like 'The children are not safe with the other parent.' They tell me the other parent is something the child should worry about. Supervised visitation, which is often requested by an alienating parent, reinforces the message that the target parent is too dangerous to be left alone with the child. When the court enters that order (unless you determine it is clearly warranted) it sends the message to the child that the court thinks the target parent is dangerous as well.¹¹

Top ten myths about parental alienation

Last year, in a research paper published in a peer-reviewed journal, Dr. Richard Warshak, a Clinical Professor of Psychiatry at the University of Texas Southwestern Medical Center, debunked the top ten fallacies and myths about parental alienation.¹² These myths are:

1. Children never unreasonably reject the parent with whom they spend the most time.
2. Children never unreasonably reject mothers.
3. Each parent contributes equally to a child's alienation.

4. Alienation is a child's transient, short-lived response to the parents' separation.
5. Rejecting a parent is a short-term healthy coping mechanism.
6. Young children living with an alienating parent need no intervention.
7. Alienated adolescents' stated preferences should dominate custody decisions.
8. Children who irrationally reject a parent but thrive in other respects need no intervention.
9. Severely alienated children are best treated with traditional therapy techniques while living primarily with their favored parent.
10. Separating children from an alienating parent is traumatic.

In discussing these strongly held assumptions and myths about parental alienation, Dr. Warshak explained that the "more often the fallacy is mentioned in professional presentations and publications, the more likely it becomes a *woozle* – a commonly accepted idea that lacks grounding in persuasive evidence yet gains traction through repetition to the point where people assume that it is true."¹³ He identified these myths about parental alienation that were commonly found in reports by therapists, custody evaluators, and guardians ad litem, in case law, and in professional articles.¹⁴ An assumption was determined to be a fallacy if it was "contradicted by the weight of empirical research, by specific case outcomes, or by [Dr. Warshak's] more than three decades of experience evaluating, treating, and consulting on cases with parental alienation claims."¹⁵

These myths fall into two categories: "those that predominantly relate to the genesis of parental alienation and those concerned with remedies for the problem."¹⁶ For the purposes of this article, I will focus on the latter myths.

Myth # 1 - Courts cannot enforce parenting time against an alienated adolescent's wishes.

Consider two scenarios:

Scenario 1: A judge who understood that a 13-year old's decision to sever his relationship with his father reflected impaired judgment but nevertheless acquiesced to the boy's demands because, "He is now of an age where, even if he may be too immature to appreciate what is best for him, he cannot be physically forced to remain where he does not want to be."¹⁷

Scenario 2: A judge who, faced with a similar situation, addressed the teenage boys: "I want you gentlemen to understand that it is the court's order, not your parents' order that you and your parents are abiding by. And the consequences fall on your parents if there is a failure to comply, so I want

you to know that while you think you are of an age where you can make these decisions or should be able to make these decisions, you're not yet."¹⁸

Which orientation, of the two mentioned above, is likely to stop alienating behaviors and save a fast-deteriorating parent-child relationship? Lawyers, guardians ad litem, parenting coordinators, therapists, parents, and even judges feel stymied when adolescents refuse to follow court-ordered parenting time schedule. The alienating parent is only too happy to point out: I have encouraged my teen to go and see the other parent but he just won't do it. What to do?

One thing to do would be what a trial judge recently did in Nebraska.¹⁹ In stripping a mother of custody and awarding custody to the father, the court found that the mother encouraged the children to violate the parenting plan and was alienating them from their father. In response to the mother's argument that it was up to her 15-year old daughter to decide whether to see her father, the trial court stated:

I'm going to tell you the law in Nebraska is very clear, 15-year-olds don't make the decision about whether they attend visitation time with their parents or not...If [the daughter] suddenly decided that she didn't like to go to school, for example, or that she

didn't like one of her teachers or that she didn't want to do something like that, or that she didn't want to go to a medical appointment, I'm going to guess that you would find a way to make sure that she got there regardless of whether she didn't want to or not....[A]s a parent, you're under an order for parenting time to take place.²⁰

There are plenty of things that courts can do. But one thing that never succeeds is to attempt to "get through" to the alienating parent:

As judges we all develop a 'speech' that we give parents that are interfering in the other parent's relationship or acting in other damaging ways to their children. We too often think that our 'speech' is so good we could get through to a brick. In alienation cases, it is different. Never base your strategy or concentrate your efforts on getting through to the alienating parent. They are not only committed to resisting change, but often they believe in their perception. I have made this mistake myself and I can tell you that they have no epiphany. It is far more effective to attempt to change behavior by forcing them to fear consequences by the court.²¹

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Courts however need not feel helpless in the face of oppositional behavior from alienated teenagers. Research studies have demonstrated that most children's protests evaporate when reunited with a rejected parent.²² Adolescents, like adults, need to understand that they are not above the law or beyond its reach. Teenagers comply with many rules and expectations that are not of their own choosing. "It is an error to assume that they do not benefit from an assertion of authority on the part of the court and their parents."²³ As Dr. Warshak points out, despite their more mature cognitive capacities compared to younger children, adolescents are suggestible, to external influence and highly susceptible to immature judgments and behavior.²⁴ Instead of giving into children's demands, the court can and should order an intervention to assist children in adjusting to court orders that place them with their rejected parent.²⁵ There should be a clearly outlined set of consequences for the alienating parent enabling violation of court orders. As a sanction for the alienating parent's actions, courts have awarded the target parent additional parenting time.²⁶ Depending on the circumstances, maybe the court can assess a monetary sanction for each missed visit.²⁷

The Nebraska Court of Appeals recently affirmed a trial court's decision that sanctioned a mother for violating several court orders including a parenting plan.²⁸ The trial court gave the mother suspended jail sentences of 48 hours and 30 days. It gave the mother an opportunity to purge the 48-hour jail sentence if she wrote two statements – "I love my child more than I hate her father" and "I will never disobey an Order of this Court again" – 100 times each and provide them to the Court²⁹. The Court also gave the mother an opportunity to avoid the 30-day jail sentence if she did not make disparaging remarks about the father in the child's presence and stayed more than one mile away from the child's school on days the father had parenting time. An additional jail sentence of 48 hours could be purged if the mother wrote and delivered a letter to the child's school explaining the modified parenting time and that she was not to be present at school during the father's pick up and drop off times. The appellate court not only affirmed the trial court's decision but pointed out to the mother when she repeatedly argued that there was no provision in the prior orders which prevented her from being at the child's school:

This argument misses the point, however, which is that [the mother's] presence at school on these occasions and her encouraging [the child] not to leave with her father interfered with [the father's] ability to exercise his parenting time.³⁰

Courts can and should enforce parenting plans. Judges can subtly compel the alienating parent to get involved in solving the problem of a child who doesn't want to visit the target parent. When faced with an alienating parent who professes support for the parenting plan but claims that he or she is helpless and cannot make the child visit the other parent, here's what Judge Lowrance recommends:³¹

Ask the alienating parent: 'Are you concerned about your child not going on visits?'

Ask the alienating parent: 'How have you changed your conduct when you see your encouragement is not working?'

Ask the alienating parent: 'What have you done differently to show your concern?'

The formula for the questions is: Guidance – Boundaries – Incentives – Consequences....

What you want to look for is: they are either lying about their good faith to foster visitation or they are a completely ineffective parent. So it may be that unless there is a transfer of custody, the situation can't be turned around.

Myth # 2 - Alienated children who have irrationally rejected a parent but thrive in other respects need no intervention.

Alienated children can do well in other spheres of their lives. They can excel academically, win athletic competitions, avoid drugs, win school elections, act polite and help grandmas cross roads. At the same time, they can "sustain significant psychological impairment evident in their relationships with friends, their favored parent, and legal authorities."³² The sequela of alienation, over a period of time, bleeds into other relationships that the alienated children have. It affects their "global thinking about others as allies or enemies, contempt for those who see things differently, feelings of entitlement in personal relationships, and avoidance of conflict."³³ As parents, we teach and encourage our children to work through their conflicts. Judges encourage litigants to mediate. Our entire society is based upon the premise that rational human beings should attempt to manage and hopefully resolve a conflict. Alienated children who have been empowered to reject a parent think differently. "When conflicts arise with friends, alienated children who have been empowered to reject a parent are apt to do the same with friends: they avoid conflicts by abruptly ending friendships rather than practicing skills to manage conflict and sustain relationships."³⁴

Dr. Warshak presents three reasons for courts to intervene on behalf of alienated children despite their apparent success in areas of life unrelated to the parent-child relationship:

First, children's apparent good adjustment may be superficial or coexist with significant psychosocial problems. Second, regardless of adjustment in other spheres, the state of being irrationally alienated from a loving parent is a significant problem in its own right and is accompanied by other indices of psychological

impairment. Third, growing up apart from and in severe conflict with an able parent risks compromising children's future psychological development and interpersonal relationships.³⁵

Good grades, friends, and other achievements should not discourage a court to intervene to protect a parent-child relationship that is at risk due to alienating behaviors.

Myth # 3 - Alienated children are best treated with traditional therapy while living primarily with their favored parent.

Sir John Mortimer, the noted lawyer and creator of the "Rumpole of the Bailey" series, was once asked about his writing habits on a radio show. He told the interviewer that before he begins writing, he has a glass of champagne. It set his brain racing. The interviewer's response was: "Are you having counseling for that?"

As family law practitioners, we often advocate counseling or therapy to our clients. Often, judges' first tool of choice in trying to resolve a conflict is to send parties to therapy. Kids don't want to see the mom or dad? Go work it out in therapy. In alienation cases, research demonstrates that traditional psychotherapy, while children remain under the care of their favored parent, is unlikely to repair the strained parent-child relationship and in fact, may make things worse.³⁶ Why?

One reason why phobia reduction techniques fail to overcome children's refusal to spend time with a parent is that most of these children, except preschoolers, do not really fear their rejected parent. If they act frightened of the parent, often this is a ruse to avoid contact. The lack of genuine fear is evident in the children's uninhibited denigration, expressions of hatred, and disrespect toward the rejected parent, as opposed to the obsequious or withdrawn behavior typical of children's interactions with a feared adult.³⁷

Traditional therapy can magnify and solidify the animosity and hatred that the alienated child feels towards the target parent. As Judge Lowrance found:

I have seen traditional therapists allow the child to determine how long it will be (if ever) before they agree to see the target parent. Because the child is aligned with the alienating parent, they are emotionally required to keep rejecting contact with the target parent. Remember, alienated children are often told that if they are nice to the target parent, it could be used 'against' them in court.³⁸

Effective therapy, in these circumstances, is reunification therapy. Reunification therapy, in contrast to traditional therapy, activates old positive memories and more importantly challenges distorted thinking. It is not uncommon to see false

memories implanted in a child in a severe alienation case. In some cases of severe alienation, therapy may have to be suspended and the courts may have to think about other "effective interventions that provide transformative experiences that help children relinquish negative attitudes while saving face."³⁹ If therapy is not helping and may aggravate the situation, the therapist may feel ethically bound to inform the court that treatment should be discontinued.⁴⁰

Myth # 4 - Separating children from an alienating parent is traumatic.

Despite the research that demonstrates that alienation abates when children are required to spend time with the parent they claim to hate or fear, some experts mislead courts into believing that dire consequences will befall the children if the court enforces parenting time against a child's wishes. Courts would do well to put these predictions to a *Daubert* test. Such predictions are highly vulnerable to "reliability challenges because the experts cite undocumented anecdotes, irrelevant research, and discredited interpretations of attachment theory. No peer-reviewed study has documented harm to severely alienated children from the reversal of custody."⁴¹ On the other hand, there *are* studies of adults who were allowed to reject a parent and who later regretted that decision and reported long-term problems with guilt and depression that they attributed to having been allowed to reject one of their parents.⁴²

Experts who advocate against separating children from an alienating parent usually rely on the so-called attachment theory.⁴³ The research behind such predictions of doom and gloom cannot be accurately applied to alienation cases. It primarily concerns children who experienced prolonged institutional care as a result of being orphaned or separated from their families for other – often severely traumatic – reasons.⁴⁴ When faced with such experts, attorneys should challenge the experts to "unpack evocative jargon" and challenge the science behind such predictions.⁴⁵ "The lack of empirical support for such pessimistic predictions can be contrasted with the benefits of removing a child from the daily care of a disturbed parent whose behavior is considered psychologically abusive."⁴⁶ At times, separating the child from an alienating parent coupled with effective intervention measures is the only way that a court can remedy alienation.⁴⁷

Even changing custody may not be enough in some cases. In a Michigan case, the trial court, upon finding alienation amongst other things, awarded the father sole physical custody.⁴⁸ The Michigan Court of Appeals affirmed the trial court's custody decision.⁴⁹ Upon the change of custody, the alienating parent retained liberal parenting time. The reaction was swift and horrific. The alienating parent manufactured allegations of sexual abuse against the target parent, orchestrated investigation of abuse by authorities in Colorado and Michigan, abducted the children and fled to Missouri, sought refuge at a

“safe house” in Missouri, dyed the children’s hair and limited the children’s ability to go outdoors to avoid being found.⁵⁰ Ultimately, the alienator was arrested and the children returned to the target parent. The trial court, finding the alienating parent’s behavior to be severely contemptuous, ordered the parent to serve 90 days in county jail. Importantly, the court noted that it did not enforce parenting time orders during periods of incarceration.⁵¹

Alienators “going postal:” Unfair and unjust criticism of judges.

Parental alienation cases often demand hard-hitting decisions. A judge, after reviewing the record and weighing admissible evidence produced at a trial, may be required to fashion an appropriate remedy. Depending on the circumstances of the case, the remedy could be reunification therapy, change of custody, and/or jail time for violation of court orders. When faced with an adverse ruling, it is not uncommon for an alienator to lash out at the court and the professionals involved by distorting the facts, refusing to acknowledge the severe harm caused by parental alienation and disparaging and criticizing the court – all outside the confines of appellate process.

In this day and age of social media, lines are blurred between free speech and cyber-bullying. Last summer, the President-elect laid into U.S. District Judge Gonzalo Curiel. The Judge was publicly criticized of being incapable of adjudicating a case because he was “Mexican.” The President-elect labeled the judge a “hater,” and went on to state in the media: “I’m telling you, this court system, judges in this court system...ought to look into Judge Curiel, because what Judge Curiel is doing is a total disgrace.”⁵² The “traditional press, the blogosphere, and Twitter all went crazy”⁵³; Judge Curiel, of course, remained silent. Under the ABA’s Model Code of Judicial Conduct, Rule 2.10(A), “a judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court.”⁵⁴

The Michigan Code of Judicial Conduct restricts judicial response more absolutely than the ABA Model Code. Canon 3(6) mandates that “a judge should abstain from public comment about a pending or impending proceeding in any court, and should require a similar abstention on the part of court personnel subject to the judge’s direction and control.” In face of stinging criticism – on Facebook, Twitter, blogs, websites, media – judges stay silent. Court staff and personnel stay silent. “That leaves to us, the lawyers, the task to speak up on behalf of judges unfairly accused.”⁵⁵ To assist the state and local bar associations in coordinating responses to inaccurate and unjust criticisms, the ABA has prepared a guide called *Rapid Response to Unfair and Unjust Criticism of Judges*.⁵⁶ The guide, written by the prior Standing Committee on Judicial Independence, emphasizes the critical need to respond to attacks in a timely manner and appropriate manner.

The ABA’s goal is to:

To provide a mechanism through which a bar association and members of other constituencies can provide timely responses to the serious, unjust criticisms of judges and the judiciary or to misunderstandings about the role of a judge or the judicial system. The focus of these responses is to provide the public with information to help them better understand the legal issues related to a specific situation, including the role of judges, the application of the law, and the restrictions and responsibilities placed on judges in the canons and rules.⁵⁷

As Justice Sandra Day O’Connor reminded us, “where democracy depends on the separation of powers and vital and independent judiciary – ‘[c]riticism is fine; retaliation and intimidation are not.”⁵⁸

It’s time for the State Bar of Michigan and/or the Family Law Section to form a taskforce that can coordinate a response, if one is required, to inaccurate and unfair attacks on our judiciary.

About the Author

The author is a trial lawyer and the owner of the law firm Lorandos Joshi, P.C. Mr. Joshi’s practice focuses on complex litigation including cases involving parental alienation and international divorce. Mr. Joshi has represented and counseled clients across the nation and internationally on the issue of parental alienation. He has been admitted to practice law in Michigan, New York, District of Columbia and India. Mr. Joshi serves as the Editor-in-Chief of Litigation, a journal published by the Section of Litigation of the American Bar Association.

Endnotes

- 1 See Stanley S. Clawar & Brynne V. Rivlin, *Children Held Hostage: Dealing with Programmed and Brainwashed Children* (American Bar Association Press 1991).
- 2 See e.g. *Moir v. Moir*, Docket No. 323725 (Mich. COA, Feb. 11, 2016), *McNutt v. McNutt*, Docket No. 328214 (Mich. COA, Dec. 15, 2015), *Brady v. Brady*, Docket No. 326396, (Mich. COA, Sept. 22, 2015), *Webbe v. Webbe*, Docket No. 325847 (Mich. COA, July 30, 2015), *Poag-Emery v. Emery*, Docket No. 318401 (Mich. COA, April 22, 2014).
- 3 Michele Lowrance is a former domestic relations judge in Cook County, Illinois. She has written and presented extensively on the topic of parental alienation and judicial interventions.
- 4 Michele Lowrance, *A Judge’s Perspective on Parental Alienation*, in *Parental Alienation: The Handbook for Mental Health and Legal Professionals*, 507 (Demosthenes A. Lorandos, William Bernet, and Richard eds., 2013).
- 5 *Boterenbrood v. Boterenbrood*, Ottawa County Circuit Court Case No: 11-71079-DM, pg. 11.
- 6 *Id.*

- 7 Michele Lowrance, *A Judge's Perspective on Parental Alienation*, in *Parental Alienation: The Handbook for Mental and Legal Professionals*, 503 (Demosthenes A. Lorandos, William Bernet, and Richard Sauber eds., 2013).
- 8 Lewis Carroll, *Alice's Adventures in Wonderland & Through the Looking Glass* 7 (Cosimo 2010) (1865).
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PARENTAL ALIENATION: THE PROBLEM

(Part One of a Two-Part Series)

By ASHISH S. JOSHI

Ideally, a divorcing couple aspires for a healthy closure of a marriage. Yet when a marriage has produced children, a post-divorce parent-child relationship continues to exist and necessitates that the parents, despite their divorce, continue to co-parent the child. At the healthiest end of this spectrum, a child has positive relationships with *both* parents and desires time with *each* of his or her parents. The majority of post-divorce children fit into this category. At the other end of this spectrum is an unhealthy, pathological situation wherein a child rejects a parent. Where the rejection is unequivocal, strident, without guilt or ambivalence, absolute and without justification, we encounter the phenomenon known as “parental alienation.”

For litigants who are caught up in the tentacles of the alienation monster and attempt to seek redress from the family court system, the words of the actor Alec Baldwin ring true: “to be pulled into the American family law system in most states is like being tied to the back of a pickup truck and dragged down a gravel road late at night. No one can hear your cries and complaints, and it is not over until they say it is over.”¹

Parental Alienation: What’s in a Name?

The Michigan Court of Appeals has defined parental alienation as “[t]he process of one parent trying to undermine and destroy to varying degrees the relationship that the child has with the other parent.”² It is a “mental condition in which a child – usually one whose parents are engaged in a high-conflict separation or divorce – allies himself or herself strongly with an alienating parent and rejects a relationship with the ‘target’ parent without legitimate justification.”³

Experts have used different terms to describe parental alienation.⁴ For example, in their book published by the American Bar Association, Stanley Clawar, a sociologist, and Brynne Rivlin, a social worker, used the terms “programming,” “brainwashing,” and “indoctrination” when describing the behaviors that cause parental alienation.⁵ The authors explained that these behaviors

“...hinder the relationship of the child with the other parent due to jealousy, or draw the child closer to the communicating parent due to loneliness or a desire to obtain an ally. These techniques may also be employed

to control or distort information the child provides to a lawyer, judge, conciliator, relatives, friends, or others, as in abuse cases.”⁶

Another expert, Dr. Richard Warshak, has used the term “pathological alienation” to mean:

...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.⁷

Recently, the Nebraska Supreme Court affirmed a district court’s holding a parent in contempt of violating the Court’s parenting time orders. The Nebraska court found the custodial parent to have used “passive aggressive techniques” in undercutting the non-custodial parent’s relationship with the children.⁸ While the words “parental alienation” were not used by the Nebraska court, the discussion of the custodial parent’s strategies leave little room for doubt that the Court was addressing parental alienation. The consensus amongst the courts, experts and mental health professionals appears to be that parental alienation “refers to a child’s reluctance or refusal to have a relationship with a parent without a good reason.”⁹

As to *how* parental alienation takes place, Dr. Amy Baker’s research describing seventeen of the most prevalent alienating strategies is widely used and accepted by mental health professionals.¹⁰ These include: badmouthing, limiting contact, confiding in the child, asking the child to spy on the target parent, referring to the target parent by first name, withholding important information from the target parent and undermining the authority of the target parent. Not all strategies have to be present for alienation to occur.

In terms of the severity of the symptoms or behaviors that are manifested in the child, parental alienation can be termed as mild, moderate, or severe.¹¹ Mild parental alienation “means that the child resists contact with the target parent but enjoys the relationship with that parent once parenting time is underway.”¹² Moderate parental alienation “means that the child strongly resists contact and is persistently oppositional during parenting time with the target parent.”¹³ Severe paren-

tal alienation “means that the child persistently and adamantly refuses contact and may hide or run away to avoid being with the target parent.”¹⁴

Parental Alienation versus Estrangement

While the common denominator in both parental alienation and parental estrangement is the child’s refusal to have a relationship with one of his or her parents, the distinguishing feature of parental alienation is that the child’s rejection of the target parent is *without legitimate justification*. If, for example, a parent was abusive, the child’s rejection of that parent is for a good reason. Most mental health professionals term this legitimate rejection of a parent by a child as estrangement.

While estrangement may also result in a child rejecting a parent and may necessitate court and therapeutic intervention, it does not necessarily negate the concept of parental alienation. The existence of the former does not necessarily mean absence of the latter. At times, experts may find that despite a pattern of abuse or neglect demonstrated by a rejected parent, there *also* exists evidence of parental alienation. These cases are known as “hybrid” cases. In evaluating a case for presence of alienation and/or estrangement, it is important to look for *evidence* supporting the reason for rejection. If abusive or neglectful behavior is alleged of a parent, it is important to look for independent evidence supporting this behavior. It is important to look at the relationship as it existed prior to the divorce and/or separation. If the father is being accused of having an anger problem, was this complaint made by the child (*not* the spouse) before the separation and/or divorce? If the mother is being accused of neglect, did this problem manifest before the divorce and/or separation? Were there findings made by Child Protective Services that corroborate the allegations of abuse? Are there witnesses who have witnessed the abusive behavior of the accused parent? *Why* is this important? It is important because in a forensic setting – such as a courtroom – a fact finder is asked to determine a more objective “truth” than what practicing clinicians and therapists are asked to evaluate behind closed doors.

At times, a “policy argument” is thrown around positing that parental alienation is nothing but a gambit that has been generated to protect abusive fathers from being accountable for their actions. Sometimes this strawman of an argument is taken to preposterous levels. For example, one of the well known detractors of parental alienation wrote a letter to the Diagnostic and Statistical Manual, Fifth Edition (DSM-5) Task Force alleging that advocates of parental alienation include “father’s rights’ groups who don’t like to be interfered with when they are sexually abusing their children.”¹⁵ The detractor subsequently withdrew his statement, saying, “I apologize for suggesting that all fathers who accuse mothers of [parental alienation syndrome] are sexually abusing their children. That was clearly an overstatement that I retract. ... I do not deny that parental alienation occurs and that a lot of people are hurt when there is an alienator.”¹⁶

Abuse, of course, should not be condoned; when proven, it has to be met with swift and effective action. However, in a forensic setting, it may be difficult at times to distinguish estrangement from alienation. “Determining when a child’s negative feelings about one parent are rational or irrational is more often than not quite challenging. In some respects, the process is similar to differentiating a non-bizarre delusion from a persistent, justified worry.”¹⁷ A child who has been alienated typically “has a false belief that the rejected parent has been abusive or neglectful. Children with false beliefs about events that never actually occurred may develop false memories ... memories of non-events.”¹⁸ In evaluating a case for the presence of alienation and/or estrangement, the court appointed evaluators and/or experts must investigate whether the reasons given for contact refusal are true, accurate and/or justified. Fortunately, there is good research that shows how to do it.¹⁹

A thorough investigation into allegations of abuse is necessary not only to rule out the possibility of estrangement but also to understand alienation. Domestic violence is about control and domination. A perpetrator of domestic violence is likely to continue his or her “violent” pattern by controlling the children also. Research has demonstrated that “abusive ex-partners are likely to attempt to alienate the children from the other parent’s affection (by asserting blame for the dissolution of the family and telling negative stories), sabotaging family plans (by continuing criticism or competitive bribes), and undermine parental authority (by explicitly instructing the children not to listen or obey).”²⁰ A parent who has been found to be abusive or controlling and domineering is more likely to continue his or her harassing and controlling pattern by manipulating the children to turn against the victim parent.²¹

Another differentiating aspect between estrangement and alienation is the level of rejection of a parent by the child. An alienated child is polarized in his or her views of the rejected parent. The target parent is characterized as horrible; the preferred parent is praised as “perfect.” The level of polarization in severe alienation cases is pathological. While non-alienated children recover quickly from whatever caused their resentment, alienated children “never” “ever” want to see the target parent. Though it sounds counter-intuitive, research shows that an alienated (and non-abused) child may be *more* negative toward the rejected parent than a child who was actually abused:

“It is remarkable that abused children frequently remain attached to their abusive parents, whom they might perceive as charming and charismatic. ... a maltreated child may have ambivalent feelings toward the abusive parent; however, the alienated child almost always has highly negative attitudes toward a non-abusive parent.”²²

Parental Alienation versus Parental Alienation Syndrome

Courts often face a battle of experts on the topic of “parental alienation syndrome.” A parent who is accused of engaging in alienating behaviors may present expert opinion that “parental alienation syndrome” has no scientific underpinning and therefore, the court must disregard any and all evidence of parental alienation. This is a red herring.

The term “Parental Alienation Syndrome” was formulated by a child psychiatrist Richard Gardner. Dr. Gardner explained:

“the parental alienation syndrome is a disorder that arises primarily in the context of child-custody disputes... It results from the combination of a programming (brainwashing) parent’s indoctrinations and the child’s own contributions to the vilification of the target parent...”²³

Dr. Gardner’s formulation of Parental Alienation Syndrome was lauded by some and criticized by others. The criticism that was levied at Dr. Gardner mainly consisted of “*ad hominem*” and shoddy scholarship” that found him pilloried.²⁴ However, since Dr. Gardner’s formulation of the Parental Alienation Syndrome in the mid eighties, several mental health professionals and researchers, working *independently* of Dr. Gardner, have studied the behaviors that are considered as alienating behaviors and reached a consensus that parental alienation is real and it constitutes “child abuse.”²⁵ The Clawar / Rivlin’s study that was published by the American Bar Association in their book titled *Children Held Hostage*, Dr. Richard Warshak’s description of a pattern of coercive control and domination by a parent, Leona Kopetski’s research, Barry Bricklin’s work and Johnston / Kelly’s paper referring to parental alienation as “an insidious form of emotional abuse of children that can be inflicted by divorced parents,” *all* ultimately culminated into a proposal that parental alienation be included in DSM-5.²⁶

The difference between the term parental alienation and “parental alienation syndrome” is that Dr. Gardner’s definition focuses solely on the child’s behavior after he or she has been successfully alienated from the targeted parent. Whereas parental alienation “focuses on the behavior and actions of the aligned parent, rejected parent and the child.”²⁷ As the Connecticut Superior Court acknowledged, the “strategies” of alienation are “scientifically present and reliable, and thus pass the ...*Daubert* test.”²⁸ In an informal poll of members of the Association of Family and Conciliation Courts conducted in 2010, 98 percent of the 300 respondents responded affirmatively to the question: “Do you think that some children are manipulated by one parent to irrationally and unjustifiably reject the other parent?”²⁹ While the “parental alienation syndrome” may continue to generate controversy, there is virtually no disagreement amongst the mental health professionals on parental alienation.

DSM-5: A Recent Clarification from the Horse’s Mouth

Another argument lobbed against parental alienation is that it is not included in the “bible” of mental disorders – the DSM-5. Hence, the argument goes, it must not be good science. This is another red herring. Prior to the publication of DSM-5, “there was a proposal to include parental alienation disorder as a new diagnosis.”³⁰ The members of the DSM-5 Task Force “never said that they doubted the reality or the importance of parental alienation.”³¹ “However, they concluded that parental alienation did not meet the standard definition of a mental disorder, that is, ‘the requirement that a disorder exists as an internal condition residing within an individual.’”³² Accordingly, the DSM-5 Task Force “said that parental alienation should be considered an example of a relational problem because it involves a disturbance in the child’s relationship with one or both parents.”³³

Recently, two of the authors who contributed to DSM-5 along with Dr. William Bernet of Vanderbilt University School of Medicine, published a paper in the peer reviewed Journal of the American Academy of Child & Adolescent Psychiatry.³⁴ The authors pointed out that “one of the new terms introduced in the DSM-5 was ‘child affected by parental relationship distress’ (CAPRD).”³⁵ The authors elaborated that their purpose of publishing the article was “to explain how clinicians and researchers can use the new terminology of CAPRD.”³⁶ They pointed out that “since two of the authors of [the] article” wrote the chapter on “Other Conditions” in the DSM-5, their article was consistent with the structure, content, and intentions of the DSM-5.³⁷ The authors proposed that the CAPRD category should be used by clinicians “when the focus of clinical attention is the negative effects of parental relationship distress on a child in the family, including effects on the child’s mental or medical disorders.”³⁸ The term “parental relationship distress,” authors pointed out, includes behaviors such as “persistent disparagement of one or both parents by the other parent.”³⁹ Typically, as a result of such behaviors, “a child affected by parental relationship distress displays impaired functioning in behavioral, cognitive, affective, and/or physical domains. Examples of behavioral problems include oppositionality and the child’s reluctance or refusal to have a relationship with a parent without a good reason (parental alienation).”⁴⁰ Examples of “cognitive problems” may include the child “adopting the false belief that the rejected parent is evil or dangerous (parental alienation).”⁴¹ The authors clarified that “children who experience parental alienation almost always fulfill the definition of CAPRD.”⁴² The concept of parental alienation is covered by DSM-5.

The psychological damage associated with parental alienation has been well researched and documented.⁴³ Heeding the clarion call of anguished parents and frustrated mental health professionals, courts around the country have inter-

vened in the cases involving parental alienation. In part two of this article, I will discuss the issue of court interventions – what courts can and should do when faced with parental alienation.

About the Author

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No-Contact Orders in Parental Alienation Cases

It is critical to understand why family courts order temporary no-contact periods between the favored parent who has been found to have engaged in alienating behaviors and the child.

By Ashish Joshi

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Parental alienation is not new: The mental condition has been described in the legal cases since the early nineteenth century and in the scientific literature since the 1940s. *See, e.g.*, “Westmeath v. Westmeath: The Wars Between the Westmeaths, 1812–1857,” in Lawrence Stone, *Broken Lives: Separation and Divorce in England, 1660–1857*, at 284 (1993); David M. Levy, *Maternal Overprotection* 153 (1943). One of the most widely accepted definitions of the condition is a “mental condition in which a child—usually one whose parents are engaged in a high-conflict separation or divorce—allies himself or herself strongly with an alienating parent and rejects a relationship with the ‘target’ parent without legitimate justification.” D. Lorandos, W. Bernet & R. Sauber, “Overview of Parental Alienation,” in *Parental Alienation: The Handbook for Mental Health and Legal Professionals* 5 (Lorandos, Bernet & Sauber eds., Charles C. Thomas Ltd. 2013).



A Form of Emotional Abuse That Should Not Be Tolerated

In defining parental alienation, family courts have focused on behaviors manifested by an alienating parent and the signs of alienation in the affected child:

- In *Meadows v. Meadows*, the Michigan Court of Appeals focused on the behaviors of an alienating parent: “The process of one parent trying to undermine and destroy to varying degrees the relationship that the child has with the other parent.” *Meadows v. Meadows/Henderson*, 2010 WL 3814352 (Mich. Ct. App. 2010) (unpublished).
- In *McClain v. McClain*, the Tennessee Court of Appeals focused on the mental condition of the child: “The essential feature of parental alienation is that a child . . . allies himself or herself strongly with one parent (the preferred parent) and rejects a relationship with the other parent (the alienated parent) without legitimate justification.” *McClain v. McClain*, 539 S.W.3d 170, 182 (Tenn. Ct. App. 2017).
- In *J.F. v. D.F.*, the New York Supreme Court attempted to define parental alienation by borrowing a chapter from the elements of the tort of intentional infliction of emotional distress and defined the condition to require that

(1) the alleged alienating conduct, without any other legitimate justification, be directed by the favored parent, (2) with the intention of damaging the reputation of the other parent in the children’s eyes or which disregards a substantial possibility of causing such, (3) which proximately causes a diminished interest of the children in spending time with the non-favored parent and, (4) in fact, results in the children refusing to spend time with the targeted parent either in person, or via other forms of communication.

J.F. v. D.F., 61 Misc. 3d 1226(A), 2018 N.Y. Slip Op. 51829(U) (N.Y. Sup. Ct. 2018).

Courts have also used terms other than parental alienation to criticize the very behaviors underlying the condition but have chosen to call it by another name. For instance, in *Martin v. Martin*, the Nebraska Supreme Court found a custodial parent to have used “passive aggressive techniques” in undercutting the non-custodial parent’s relationship with the children. *Martin v. Martin*, 294 Neb. 106 (Neb. 2016). While the words “parental alienation” were not used, the

Nebraska court's detailed discussion of the custodial parent's alienating behaviors and strategies left little room for doubt that the court was addressing the phenomenon of parental alienation.

Experts, too, have used different terms to describe these behaviors (*see* Lorandos, Bernet & Sauber, *supra*, at 8):

- For example, Dr. Stanley Clawar, a sociologist, and Brynne Rivlin, a social worker, use the terms “programming,” “brainwashing,” and “indoctrination” when describing the behaviors that cause parental alienation. Clawar & Rivlin, *Children Held Hostage: Dealing with Programmed and Brainwashed Children* (ABA Section of Family Law 2013). The authors explained that these behaviors

[h]inder the relationship of the child with the other parent due to jealousy or draw the child closer to the communicating parent due to loneliness or a desire to obtain an ally. These techniques may also be employed to control or distort information the child provides to a lawyer, judge, conciliator, relatives, friends, or others, as in abuse cases.

Id. at 15.

- Dr. Richard Warshak, a clinical professor of psychiatry, has used the term “pathological alienation” that results from such alienating behaviors: [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. Warshak, “Social science and parental alienation: Examining the disputes and the evidence,” in *The International Handbook of Parental Alienation Syndrome: Conceptual, Clinical and Legal Considerations* 361 (R.A. Gardner, S.R. Sauber & D. Lorandos eds., 2006).

Regardless of the varying definitions of parental alienation, or even nomenclature, the consensus among the courts is that “there is no doubt that parental alienation exists.” *J.F. v. D.F.*, 61 Misc. 3d 1226(A), 2018 N.Y. Slip Op. 51829(U). More importantly, courts agree that it “is a form of emotional abuse that should not be tolerated.” *McClain v. McClain*, 539 S.W.3d at 200. In the

end, the consensus among the courts, experts, and mental health professionals appears to be that parental alienation “refers to a child’s reluctance or refusal to have a relationship with a parent without a good reason.” W. Bernet, M. Wamboldt & W. Narrow, “Child Affected by Parental Relationship Distress,” 55 *J. Am. Acad. Child & Adolescent Psychiatry* 571, 575 (July 2016).

Temporary No-Contact Orders—Necessary and Warranted in Alienation Cases

Alienated children suffer from severe behavioral, emotional, and cognitive impairments. R. Warshak, “Severe Cases of Parental Alienation,” in *Parental Alienation: The Handbook for Mental Health and Legal Professionals* 5 (Lorandos, Bernet & Sauber eds., Charles C. Thomas Ltd. 2013). Specialized reunification programs (which are radically different from “therapy”) are designed to repair the damaged relationship between alienated parents and the children. They often require a temporary no-contact period between the favored parent and the children, together with the parent’s compliance with some conditions before the resumption of regular contact. Resumption of contact is dependent on the favored parent’s willingness and demonstrated ability to modify his or her alienating behaviors—behaviors that would no doubt sabotage the gains made during the reunification program in an absence of a no-contact order. Also, “optimal timing” to resume regular contact would depend on a number of factors, “such as the favored parent’s ability to modify behaviors that create difficulties for the children, the children’s vulnerability to feeling pressured to realign with a parent, the duration of the alienation or estrangement prior to the Workshop, and the favored parent’s past conduct and compliance with court orders.” Warshak (2010), *supra*, at note 95.

In cases of severe parental alienation, experienced and knowledgeable clinicians recommend “a period of 3-6 months before regular contacts resume” between a formerly favored parent and the child “to allow a child to consolidate gains and work through the numerous issues that arise in living with the rejected parent free from the influence of the favored parent.” *Id.* While the regular (unsupervised) contact is held off for a limited period, therapeutically monitored contacts between a formerly favored parent and child may occur sooner. *Id.*

It is critical to understand why family courts order temporary no-contact periods between the favored parent who has been found to have engaged in alienating behaviors and the child.

When contact resumes, it usually occurs first during sessions with a professional who can monitor its impact on the child who is going through (or has just been through) a reunification program. Such precautions are necessary because research demonstrates that it is very hard for alienating parents to change their behaviors. If contact is restored prematurely or without proper safeguards, the children become “re-alienated,” reverting to their old behaviors and back to rejecting the target parent. *Id.* at 69. The pathology of parental alienation is so severe that some alienators “chose to go for months “without seeing [their] children or working towards meeting conditions for renewal of contact.” *Id.* Some refuse to cooperate with court orders and want “no contact with [the] children because [they] take their [the children’s] reconciliation with [the target parent] as a personal rejection.” *Id.* One “chose to cut off all contact with [the child] and said that when the boy turns 18 he could choose to renew contact.” *Id.*

Repairing the Damaged Relationship Between the Alienated Child and the Targeted Parent

Once a court determines a child has been alienated, it must make a decision as to what legal and mental health interventions are mandated in the best interests of the child. In making this decision, courts often face what British Columbia Justice Bruce Preston termed “a stark dilemma.” *A.A. v. S.N.A.*, [2007] BCSC 594 (Can.).

More than 10 years ago, Justice Preston wrestled with this dilemma:

The probable future damage to M. by leaving her in her mother’s care must be balanced against the danger to her of forcible removal from the strongest parental connections she has . . . I conclude that the forcible removal of M. from her mother’s and her grandmother’s care has a high likelihood of failure, either because M. will psychologically buckle under the enormous strain or because she will successfully resist re-integration with her father.

Id. at 84–87.

Nonetheless, the Court of Appeals weighed in on the other side of this “stark dilemma,” disagreed, and found that the obligation of the court to make the order it determines to be in

the best interests of the child “cannot be ousted by the insistence of an intransigent parent who is ‘blind’ to her child’s interests. . . . The status quo is so detrimental to M. that a change must be made in this case.” *A.A. v. S.N.A.*, [2007] B.C.J. No. 1475; 2007 B.C.C.A. 364; 160 A.C.W.S. (3d) 500, at 8.

In contrast to Justice Preston’s “stark dilemma,” family courts around the country, recognizing the severe psychological toll wreaked by parental alienation on the children, are increasingly open to providing aggressive but necessary intervention:

- In February 2020, an Indiana family court found that a father had engaged in severe parental alienation and domestic and family abuse. Given that the child was over 16 years of age, the court recognized that time was of essence in reuniting the child with the mother, the targeted parent. The court provided immediate and effective intervention: It gave the mother sole legal and primary custody, ordered the mother and the child to participate in a specialized reunification program that is designed for the alienation dynamic, ordered a 90-day no-contact period between the father and the child, and ordered the father to cooperate and comply with the recommendations of the reunification counselors. *In re the Marriage of Wright and Wright*, No. 53C08-1804-DC-000203 (Monroe Cty. Cir. Ct. VIII, Ind. Feb. 6, 2020).
- In 2017, the Tennessee Court of Appeals affirmed a ruling where the trial court, upon finding severe parental alienation, ordered no contact between the minor child and the alienating parent (the father) “for at least 90 days” beginning with a reunification program. *McClain v. McClain*, 539 S.W.3d at 183. In addition, the alienating parent’s future parenting time with the child was conditioned on the parent’s compliance with the rules and recommendations of the reunification program counselor and the aftercare professional. *Id.* As the court found, the seemingly harsh but temporary no-contact period was a necessary step not only to give the child a realistic hope at reunification but also to protect the child from continued alienating behaviors. The court reasoned that the traditional therapy, counseling, education, and parenting coordination had yielded zero results and made a bad case worse:

That’s what we’ve been doing for nigh on 16 years. We’ve been working on this and working on it and we’ve been to counselors and therapists and doctors and courts

and more counselors and different therapists and more doctors and court. It's a merry-go-round upon which we have all been for many, many years and it did not work. I have no reason to believe it's ever going to work in the future."

Id. at 210.

The court realized that the temporary, 90-day no-contact period, together with a specialized reunification program, was "most likely to result in a change in the pattern of parental alienation and therefore in the best interest of the children." *Id.* at 211. Such a measure was necessary to facilitate reunification of alienated parents with alienated children and to "reduce the potential for sabotage." *Id.* at 213.

Separating Children from an Alienating Parent Found to Not Be Traumatic

Research demonstrates that alienation abates when children are required to spend time with the parent they claim to hate or fear. R. Warshak, "Ten Parental Alienation Fallacies That Compromise Decisions in Court and in Therapy," 46 *Prof. Psychol.: Res. & Practice* 235–49 (Aug. 2015). Despite this, lawyers, guardians ad litem, lawyer-guardians ad litem, children's counselors, and other professionals predict dire consequences to children if the court fails to endorse their strong and strident preferences to avoid a parent. Usually, such predictions "are vulnerable to reliability challenges because the experts cite undocumented anecdotes, irrelevant research, and discredited interpretations of attachment theory." *Id.* In dealing with such predictions, a court should consider the following: (1) No peer-reviewed study has documented harm to severely alienated children from the reversal of custody; (2) no study has reported that adults, who as children complied with expectations to repair a damaged relationship with a parent, later regretted having been obliged to do so; and (3) studies of adults who were allowed to disown a parent find that they regretted that decision and reported long-term problems with guilt and depression that they attributed to having been allowed to reject one of their parents. *Id.* (citing A.J.L. Baker, "The Long-Term Effects of Parental Alienation on Adult Children: A Qualitative Research Study," 33 *Am. J. Fam. Therapy* 289–302 (July 2005)).

Professionals who attempt to persuade courts not to separate children from an alienating parent (or oppose a temporary no-contact order between the alienating parent and the children) generally cite attachment theory to support their predictions of "trauma" or

psychological damage to children. Such arguments are flawed, misleading, and “rooted in research with children who experienced prolonged institutional care as a result of being orphaned or separated from their families for other—often severely traumatic—reasons.” *Id.* (citing P.S. Ludolph & M.D. Dale, “Attachment in Child Custody: An Additive Factor, Not a Determinative One,” 46 *Fam. L. Q.* 1–40 (Spring 2012)). A consensus of leading authorities on attachment and divorce shows that this theory does not support generalizing the negative outcomes of traumatized children who lose both parents to a case involving parental alienation, where children leave one parent’s home to spend time with their other parent, under a court order. *Id.*

Further, attorneys for targeted parents should challenge these experts to unpack their evocative jargon if they attempt to dissuade a court from intervening in an alienation case by using terms like “trauma” and “attachment.” *Id.* When these experts predict that the child will be “traumatized,” what they usually mean is that the child will be “unsettled.” *Id.* (citing J.A. Zervopoulos, *How to Examine Mental Health Experts* (ABA 2013)). Such pessimistic predictions not only lack empirical support but are willfully blind to the well-documented benefits of removing a child from an alienating parent whose behavior is considered psychologically abusive. Clawar & Rivlin, *supra*.

Effective interventions provide experiences that help uncover the positive bond between the child and the targeted parent. “These experiences can help [the children] to create a new narrative about their lives, one that is more cohesive, more hopeful, and allows them to begin to see themselves in a new place.” *Id.* (citing C.L. Norton, “Reinventing the Wheel: From Talk Therapy to Innovative Interventions,” in *Innovative Interventions in Child and Adolescent Mental Health 2* (C.L. Norton ed., Routledge 2011)).

In *Martin v. Martin*, the Michigan Court of Appeals acknowledged how alienation behaviors are alarming and psychologically abusive:

[T]hese are not minor disputes over contempt and parenting time. These are matters that could have a significant effect on the child’s life, including on her long-term mental and emotional health: having to maintain the perception of hatred and contempt toward her father—which she may or may not share with her mother—will undoubtedly affect her mental and emotional health as well as her long-term relationship with her father.

Martin v. Martin, No. 349261, slip op. at 9 (Mich. Ct. App. 2020).

Given the significant damage to children who remain alienated from a parent, removing the child from an alienating parent's custody and entering a temporary no-contact order between the two is ultimately "far less harsh or extreme than a decision that consigns a child to lose a parent and extended family under the toxic influence of the other parent who failed to recognize and support the child's need for two parents." Warshak, "Ten Parental Alienation Fallacies" (2015), *supra*, at 244.

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TEMPORARY NO-CONTACT ORDERS:

The Necessary Ingredient for Effective Reunification in Cases Involving Parental Alienation

BY ASHISH JOSHI

On January 28, 2020, the Michigan Court of Appeals issued a published opinion in a case involving parental alienation wherein it affirmed a trial court's award of sole physical and legal custody to a target parent along with a temporary no-contact order that restrained the alienating parent from having any unsupervised contact with the child. In *Martin v. Martin*, the Court, similar to several other courts around the country, refused to get drawn into the meaningless controversy surrounding the "Parental Alienation Syndrome" and instead focused its attention on the alienating parent's *behaviors*:

[Mother] ... essentially contends that 'parental alienation' is junk science. While there may be a dispute in the scientific community about whether there is diagnosable, pathological condition called parental alienation syndrome...there is no reasonable dispute that high-conflict custody disputes frequently involve acts by one parent designed to obstruct or sabotage the opposing parent's relationship with the child.¹

Parental Alienation: A Form of Emotional Abuse That Should Not Be Tolerated

Parental alienation is not a new phenomenon; the mental condition has been described in the legal cases since the early 19th century and in the scientific literature since the 1940s.² The concept of parental alienation has been acknowledged and addressed by English-speaking courts for the last 200 years. One of the most widely accepted definitions of the condition is: a "mental condition in which a child – usually one whose parents are engaged in a high-conflict separation or divorce – allies himself or herself strongly with an alienating parent and rejects a relationship with the 'target' parent without legitimate justification."³

When we peel the layers of this definition, three salient features of the phenomenon come to the light. First, parental alienation can be conceptualized as a mental condition present in the *child*, i.e., the child has a distorted or false belief that the rejected or disfavored parent is "evil," "dangerous," or somehow unworthy of love or affection. Second, the child's rejection of the alienated or target parent is *without legitimate*

justification. And this is the key distinction: if there is a documented history of the rejected parent being abusive or severely neglectful, the child's rejection of that parent could be legitimate and if so, it would not be a case of parental alienation. Third, it is important to note that the rejected parent is not expected to be a "perfect" parent and may even have contributed to the child's dislike or hatred of him or her. More often than not, a rejected parent reacts to the alienation dynamic in frustration, even anger. But such *reaction* to the sabotaging and breakdown of the parent-child relationship should not be confused with its *causation* and the essential feature of parental alienation remains that the child's rejection of the alienated parent is far out of proportion to anything that parent has done.⁴

In defining parental alienation, family courts have focused on behaviors manifested by an alienating parent and the signs of alienation in the affected child. In *Meadows v. Meadows*, the Michigan Court of Appeals defined parental alienation by focusing on the behaviors of an alienating parent: "[t]he process of one parent trying to undermine and destroy to varying degrees the relationship that the child has with the other parent."⁵ On the other hand, in *McClain v. McClain*, the Tennessee Court of Appeals defined the condition by focusing on the mental condition of the child: "The essential feature of parental alienation is that a child...allies himself or herself strongly with one parent (the preferred parent) and rejects a relationship with the other parent (the alienated parent) without legitimate justification."⁶

In another case, in *J.F. v. D.F.*, the New York Supreme Court attempted to define parental alienation by borrowing a chapter from the elements of the tort of intentional infliction of emotional distress and defined the condition to require that "(1) the alleged alienating conduct, without any other legitimate justification, be directed by the favored parent, (2) with the intention of damaging the reputation of the other parent in the children's eyes or which disregards a substantial possibility of causing such, (3) which proximately causes a diminished interest of the children in spending time with the non-favored parent and, (4) in fact, results in the children refusing to spend time with the targeted parent either in person, or via other forms of communication."⁷

Experts, too have used different terms to describe these behaviors.⁸ For example, Dr. Stanley Clawar, a sociologist, and Brynne Rivlin, a social worker, used the terms “programming,” “brainwashing,” and “indoctrination” when describing the behaviors that cause parental alienation.⁹ The authors explained that these behaviors

[h]inder the relationship of the child with the other parent due to jealousy, or draw the child closer to the communicating parent due to loneliness or a desire to obtain an ally. These techniques may also be employed to control or distort information the child provides to a lawyer, judge, conciliator, relatives, friends, or others, as in abuse cases.¹⁰

Dr. Richard Warshak, a clinical professor of psychiatry, has used the term “pathological alienation” that results from such alienating behaviors:

[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.¹¹

At times, courts have used terms other than parental alienation to criticize the very behaviors underlying the condition but have chosen to call it by another name. For instance, in *Martin v. Martin*, the Nebraska Supreme Court found a custodial parent to have used “passive aggressive techniques” in undercutting the non-custodial parent’s relationship with the children.¹² While the words “parental alienation” were not used by the Nebraska court, its detailed discussion of the custodial parent’s alienating behaviors and strategies leave little room for doubt that the court was addressing the phenomenon of parental alienation. In the end, the consensus amongst the courts, experts, and mental health professionals appears to be that parental alienation “refers to a child’s reluctance or refusal to have a relationship with a parent without a good reason.”¹³ And regardless of the varying definitions of parental alienation, or even the nomenclature, the consensus amongst the courts is that “there is no doubt that parental alienation

exists.”¹⁴ More importantly, courts agree that it “is a form of emotional abuse that should not be tolerated.”¹⁵

Repairing the Damaged Relationship Between the Alienated Child and the Target Parent: The Stark Dilemma

Once a court makes a finding of parental alienation, it thereafter must make a decision as to what legal and mental health interventions are mandated in the best interests of the child. In making this decision, courts often face what British Columbia Justice Bruce Preston termed “a stark dilemma.”¹⁶ The court must weigh and balance the long-term benefits of repairing the parent-child relationship versus the temporary “degree of emotional cost, such as creating psychological trauma or provoking the child’s destructive behavior” by removing the child from the custody of an alienating parent and/or enforcing a temporary period of no-contact between the two.¹⁷ More than ten years ago, Justice Preston wrestled with this dilemma:

The probable future damage to M. by leaving her in her mother’s care must be balanced against the danger to her of forcible removal from the strongest parental connections she has...I conclude that the forcible removal of M. from her mother’s and her grandmother’s care has a high likelihood of failure, either because M. will psychologically buckle under the enormous strain or because she will successfully resist re-integration with her father.¹⁸

The Court of Appeals weighed in on the other side of this “stark dilemma,” disagreed, and found that the obligation of the Court to make the order it determines to be in the best interests of the child “cannot be ousted by the insistence of an intransigent parent who is ‘blind’ to her child’s interests... The status quo is so detrimental to M. that a change must be made in this case.”¹⁹ Family courts around the country, recognizing the severe psychological toll wreaked by parental alienation on the children, are increasingly open to providing aggressive but necessary intervention. In February of 2020, an Indiana family law court entered an opinion wherein it found that the father had engaged in severe parental alienation and domestic and family abuse. Given that the child was over 16 years of age, the Court recognized that the time was of essence in reuniting the child with the mother, the target parent. The Court provided *immediate* and *effective* intervention: it gave the mother sole legal and primary custody, ordered the mother and the child to participate in a specialized reunification program that is designed for the alienation dynamic, ordered a 90-day no-contact period between the father and the child, and ordered the father to cooperate and comply with the recommendations of the reunification counselors.²⁰

These decisions are not outliers; they are examples of family court judges who are finally realizing that adopting the

“conservative” approach by doing the same old thing, again and again, but expecting a different result not only guarantees severe frustration but enables alienation. For instance, in 2017, the Tennessee Court of Appeals affirmed a circuit court ruling wherein the court, upon making a finding of severe parental alienation, ordered no-contact between the minor child and the alienating parent (the father) “for at least 90 days” beginning with a reunification program.²¹ In addition, the alienating parent’s future parenting time with the child was conditioned upon the parent’s compliance with the rules and recommendations of the reunification program counselor and the aftercare professional.²² As the Court found, the seemingly harsh but temporary no-contact period was a necessary step to not only give the children a realistic hope at reunification but also to protect them from continued alienating behaviors. The Court reasoned that the traditional therapy, counseling, education, parenting coordination.... the same old methods to counter alienation had yielded zero results and made a bad case far worse over a period of time:

That’s what we’ve been doing for nigh on 16 years. We’ve been working on this and working on it and we’ve been to counselors and therapists and doctors and courts and more counselors and different therapists and more doctors and court. It’s a merry-go-round upon which we have all been for many, many years and it did not work. I have no reason to believe it’s ever going to work in the future.²³

The Court realized that the temporary, 90-day no-contact period together with a specialized reunification program was “most likely to result in a change in the pattern of parental alienation and therefore in the best interest of the children.”²⁴ Such measure was necessary to facilitate reunification of alienated parents with alienated children and to “reduce the potential for sabotage.”²⁵

In *Martin*, the Michigan Court of Appeals found that exposure to parental alienation is “‘psychologically very dangerous’ for the children and...[has] ‘long-term effects’ on their future relationships.”²⁶ In such situations, a court has two tasks at hand: first, and most important, protecting the child from further psychological abuse through the continued alienating behaviors, and second, repairing the damaged relationship between the child and the rejected parent. Before settling on the options available to repair a damaged relationship, the Court must promptly ensure that the child is protected and removed from the environment where s/he was exposed to alienating behaviors. Because “continuation along the current path will only leave [the] child with a warped and unhealthy relationship with [the alienating parent], resting on a shared base of fear, loathing and anxiety, and no relationship with [the target parent].”²⁷

Temporary No-Contact Orders Are Necessary and Warranted in Alienation Cases

Alienated children suffer from severe behavioral, emotional, and cognitive impairments.²⁸ Specialized reunification programs (which are radically different from “therapy”) are designed to repair the damaged relationship between alienated parents and the children. They often require a temporary no-contact period between the favored parent and the children together with the parent’s compliance with some conditions before the resumption of regular contact. Resumption of contact is dependent upon the favored parent’s willingness and demonstrated ability to modify his or her alienating behaviors—behaviors that would no doubt sabotage the gains made during the reunification program in an absence of a no-contact order. Also, “optimal timing” to resume regular contact would depend on a number of factors, “such as the favored parent’s ability to modify behaviors that create difficulties for the children, the children’s vulnerability to feeling pressured to realign with a parent, the duration of the alienation or estrangement prior to the Workshop, and the favored parent’s past conduct and compliance with court orders.”²⁹

In cases of severe parental alienation, experienced and knowledgeable clinicians recommend “a period of 3-6 months before regular contacts resume” between a formerly favored parent and the child “to allow a child to consolidate gains and work through the numerous issues that arise in living with the rejected parent free from the influence of the favored parent.”³⁰ While the regular (unsupervised) contact is held off for a limited period, therapeutically monitored contacts between a formerly favored parent and child may occur sooner.³¹

It is critical to understand why family courts order the temporary no-contact periods between the favored parent who has been found to have engaged in alienating behaviors and the child. When contact resumes, it usually occurs first during sessions with a professional who can monitor its impact upon the child who is going through (or has just been through) a reunification program. Such precautions are necessary because research demonstrates that it is *very* hard for alienating parents to change their behaviors. If contact is restored prematurely or without proper safeguards, the children become “re-alienated,” reverting to their old behaviors and back to rejecting the target parent.³² The pathology of parental alienation is so severe that some alienators “chose to go for months “without seeing [their] children or working towards meeting conditions for renewal of contact.”³³ Some refuse to cooperate with court orders and want “no contact with [the] children because [they] take their [the children’s] reconciliation with [the target parent] as a personal rejection.”³⁴ Some “chose to cut off all contact with [the child] and said that when the boy turns 18 he could choose to renew contact.”³⁵

Separating Children from an Alienating Parent is Not Traumatic

Research demonstrates that alienation abates when children are required to spend time with the parent they claim to hate or fear.³⁶ Despite this, lawyers, GALs, LGALs, children’s counselors and other professionals predict dire consequences to children if the court fails to endorse their strong and strident preferences to avoid a parent. Usually such predictions “are vulnerable to reliability challenges because the experts cite undocumented anecdotes, irrelevant research, and discredited interpretations of attachment theory.”³⁷ A court, when presented with such “sky is falling” predictions should remember the following three facts: (1) no peer-reviewed study has documented harm to severely alienated children from the reversal of custody, (2) no study has reported that adults, who as children complied with expectations to repair a damaged relationship with a parent, later regretted having been obliged to do so, and (3) studies of adults who were allowed to disown a parent find that they regretted that decision and reported long-term problems with guilt and depression that they attributed to having been allowed to reject one of their parents.³⁸

Professionals who attempt to persuade courts to not separate children from an alienating parent (or oppose a temporary no-contact order between the alienating parent and the children) generally cite attachment theory to support their predictions of “trauma” or psychological damage to children. Such arguments are flawed, misleading, and “rooted in research with children who experienced prolonged institutional care as a result of being orphaned or separated from their families for other—often severely traumatic—reasons.”³⁹ A consensus of leading authorities on attachment and divorce shows that this theory does not support generalizing the negative outcomes of traumatized children who lose *both* parents to a case involving parental alienation, where children leave one parent’s home to spend time with their other parent, under a court order.⁴⁰

Further, attorneys for targeted parents should challenge these experts to unpack their evocative jargon if they attempt to dissuade a court from intervening in an alienation case by using terms like “trauma” and “attachment.”⁴¹ When these experts predict that the child will be “traumatized,” what they usually mean is that the child will be “unsettled.”⁴² Such pessimistic predictions not only lack empirical support but are willfully blind to the well-documented benefits of removing a child from an alienating parent whose behavior is considered psychologically abusive.⁴³ Sure, removing a child from a drug-infested household would no doubt cause anxiety to the child and the whole experience maybe unsettling. But would a court or protective services workers hesitate to remove a child from a home when confronted with strong evidence of drug-abuse or other dangerous behaviors manifested by a parent? Science tells us—and courts have agreed—that parental alienation is psychological abuse. Research has demonstrated

that the harms associated with psychological abuse or maltreatment are equal and sometimes more than other forms of abuse, including physical and sexual abuse.⁴⁴

Effective interventions—including separating the child from an alienating parent and temporarily suspending contact between the two—provide experiences that help uncover the positive bond between the child and the targeted parent. “These experiences can help [the children] to create a new narrative about their lives, one that is more cohesive, more hopeful, and allows them to begin to see themselves in a new place.”⁴⁵

In *Martin*, the Michigan Court of Appeals acknowledged how alienation behaviors are alarming and psychologically abusive:

[T]hese are not minor disputes over contempt and parenting time. These are matters that could have a significant effect on the child’s life, including on her long-term mental and emotional health: having to maintain the perception of hatred and contempt toward her father—which she may or may not share with her mother—will undoubtedly affect her mental and emotional health as well as her long-term relationship with her father.⁴⁶

Given the significant damage to children who remain alienated from a parent, removing the child from an alienating parent’s custody and entering a temporary no-contact order between the two is ultimately “far less harsh or extreme than a decision that consigns a child to lose a parent and extended family under the toxic influence of the other parent who failed to recognize and support the child’s need for two parents.”⁴⁷

About the Author

Ashish Joshi is the owner and managing partner of Joshi: Attorneys + Counselors. He serves as the lead counsel in high-stakes, complex family law and divorce cases. He has counseled and/or represented clients in state and federal courts across the United States and internationally. Mr. Joshi has been admitted to the Bar of the Supreme Court of the United States, state bars of New York, Michigan, the District of Columbia, and Gujarat, India. Mr. Joshi serves as a senior editor of Litigation, the flagship journal of the ABA’s Section of Litigation.

Endnotes

- 1 *Martin v. Martin*, Michigan Court of Appeals No. 349261 (January 28, 2020), FN 2.
- 2 See e.g., *Westmeath v. Westmeath*: The Wars Between the Westmeaths, 1812-1857, in Lawrence Stone, *Broken Lives: Separation and Divorce in England, 1660-1857*, 284 (1993); David M. Levy, *Maternal Overprotection* 153 (1943).
- 3 Lorandos D., Bernet W., Sauber R., Overview of Parental Alienation in Lorandos D., Bernet W., Sauber R., eds. *Parental Alienation: The Handbook for Mental Health and Legal Professionals*, Charles C. Thomas; 2013, pg. 5.
- 4 Bernet, W., Introduction to Parental Alienation in Lorandos D. & Bernet, W., eds. *Parental Alienation: Science and Law*, Charles C. Thomas; 2020, pg. 1-2 (Forthcoming publication).
- 5 *Meadows v. Meadows/Henderson*, 2010 WL 3814352 (Mich. App.) (Unpublished).
- 6 *McClain v. McClain*, 539 S.W.3d 170, 182 (2017).
- 7 *J.F. v. D.F.*, 61 Misc.3d 1226(A), 2018 N.Y. Slip Op. 51829(U).
- 8 Lorandos D., Bernet W., Sauber R., *supra*, pg. 8.
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PARENTAL ALIENATION AND THE ROLE OF GALs AND LGALs (Part One of Two)

By ASHISH JOSHI

Imagine this scenario: There is contentious divorce litigation with the parties fighting for custody. The child has aligned herself with the father (“favored parent”) and is resisting and refusing to spend any time with her mother (“target parent”). Despite a significant history of maternal love and care, the child claims that the mother has “abandoned us” and, despite no evidence to support it, alleges that her mother has a “drinking problem.” Court-ordered parenting time and visitation orders are routinely and consistently violated. Exchanges turn into nightmarish scenarios as the child refuses to go with the target parent. Police and Child Protective Services are summoned. The frustrated target parent keeps demanding court intervention without success. The court, also frustrated, appoints a Guardian ad litem (“GAL”) or Lawyer-Guardian ad litem (“LGAL”) to help the situation. Upon arrival on the scene, the Guardian tries to make sense of the ongoing mayhem. Given the child’s refusal to go to court-ordered parenting time the Guardian recommends a “cooling off” period, i.e., the target parent does not compel the child to go with her. The Guardian selects a therapist to provide “family therapy” or “reunification therapy” to help reunify the mother with the child. In therapy, the child tells tales of “abusive” behavior: Mom abandoned “us,” is mean, yells “for hours,” and “drinks.” The therapist uncritically accepts every statement that the child makes, regardless of the mountain of evidence to the contrary. The mother, who participates in some joint sessions, is advised not to challenge the child’s version of events and is asked to shove aside all the evidence she has put together showing a healthy, loving and close relationship with her child prior to the filing of divorce. Instead, the mother is advised to show “empathy.” The child’s acting-out and her fear and rejection of the mother gets worse. Months go by without any parenting time. Lawyers spend time on phone conferences and file motions that don’t result in any change in the status quo. The Guardian spends time talking to the child and the therapist. The therapist spends time talking to the child and the Guardian. Soon, legal fees and costs spiral out of control. The time comes when the target parent is either supremely frustrated, out of money or both. Something must give.

This scenario that plagues family courts around the country is not uncommon. Time after time, courts look to

GALs and/or LGALs to help resolve these issues in the best interests of the children. The hope, if not the goal, is to move towards a collaborative model where divorcing parties treat each other with dignity and respect, where child clients are treated like adult clients, and have a voice in the process of decision-making.¹ In contentious cases, courts are increasingly appointing attorneys for children – mainly to protect them, give them a “voice” in the proceedings and promote their best interests, but also with a hope that a neutral quasi-judicial professional may help the parties reach a resolution.

Parental alienation,² however, changes everything. It changes the child-centered model, forcing each case – with its unique set of facts and circumstances – to be viewed through a critical lens.³ Parental alienation is an unjustified campaign of denigration against a parent, often referred to as the “target parent.” The critical factor that separates alienation from estrangement⁴ is that the child’s rejection of the target parent is based on a false or unreasonable belief that is *significantly disproportionate* to the child’s actual experience.⁵

Parental alienation is a specialized area; it is also counterintuitive and generally misunderstood. Further, there is a lack of training and dearth of easily accessible resources for the various third parties involved with the children who are victims of alienation.⁶ Errors of commission and omission are easy to make through inadvertence, misinformation, lack of diligence and lack of competence or experience. These errors may constitute violations of professional codes of ethics and can have significant and at times, irreversible, impact on the result of the case.⁷

Parental alienation comes in all shapes and sizes and can be mild, moderate or severe.⁸ Depending on the severity of alienation, a child’s reaction could vary from “acting out” and being disrespectful to a target parent to refusing to go on parenting time, from demonstrating oppositional behavior to utter and complete rejection of a parent. Often, the first signs of trouble are consistent violations of court ordered parenting time, which in turn may lead a court to appoint an LGAL or GAL. However, little effort is made in ensuring that the professional in question has the requisite knowledge, skill and experience in dealing with cases involving parental alienation.⁹

GALs, LGALs and Their Respective Roles

In a child custody dispute, the court may appoint a GAL to investigate the matter and make recommendations for the resolution of the dispute in the best interests of the child.¹⁰ In Michigan, “Guardian ad litem” is a legal term of art and therefore, resort to a legal dictionary to determine its meaning is appropriate.¹¹ The term is defined in Black’s Law Dictionary as “[a] guardian, usu. a lawyer, appointed by the court to appear in a lawsuit on behalf of an incompetent or minor party.”¹² And, the term “guardian” in turn is defined as “[s]omeone who has the legal authority and duty for another’s person or property because of the other’s infancy, incapacity, or disability.”¹³ In a child custody or probate setting, a GAL’s role is to *assist the court* in determining the child’s best interests and he or she need not be an attorney.¹⁴

In contrast, if the court determines that the minor’s interests are inadequately represented, the court may appoint an LGAL to represent the minor.¹⁵ The role of the LGAL is defined by the statute, which provides that the duty of the LGAL is *to the child and not to the court* and that the attorney-client privilege applies.¹⁶ But while the LGAL’s duty is to the child, it does not translate into simply being a mouthpiece for the child’s wishes. The LGAL has the duty to first determine and then advocate for the child’s *best interests*.¹⁷ And while the child’s wishes are relevant to the determination of his or her best interests, they should be weighed according to the child’s competence and maturity.

The LGAL is a relatively new and unique creation by the Michigan legislature.¹⁸ The professional’s powers and duties are prescribed in a statute, which include, in pertinent part:¹⁹

- (a) The obligations of the attorney-client privilege.
- (b) To serve as the *independent* representative for the child’s *best interests*, and be entitled to full and active participation in all aspects of the litigation and access to all relevant information regarding the child.
- (c) To determine the facts of the case by conducting an *independent* investigation including but not limited to, interviewing the child, social workers, family members, and others as necessary, and reviewing relevant reports and other information...
- (d) To meet with or observe the child and *assess* the child’s needs and wishes with regard to the representation and the issues in the case...
- (e) To explain to the child, taking into account the child’s ability to understand the proceedings, the lawyer-guardian ad litem’s role.

- (f) To file all necessary pleadings and papers and *independently* call witnesses on the child’s behalf.

...

- (i) To make a determination regarding the child’s best interests and advocate for those best interests *according to the lawyer-guardian ad litem’s understanding of those best interests, regardless of whether the lawyer-guardian ad litem’s determination reflects the child’s wishes*. The child’s wishes are relevant to the lawyer-guardian ad litem’s determination of the child’s best interests, and the lawyer-guardian ad litem shall weigh the child’s wishes according to the child’s competence and maturity. Consistent with the law governing attorney-client privilege, the lawyer-guardian ad litem shall inform the court as to the child’s wishes and preferences.

It is important to note that the law obligates the LGAL to serve as an *independent* representative of the child’s best interests, to conduct an *independent* investigation, to determine the child’s best interests and thereafter to advocate for those best interests according to the LGAL’s understanding of those best interests. This is a significant power and an obligation that is bestowed upon the LGAL. When serving in this role, an LGAL functions as a “guardian” with the statutory authority and duty to care for the child by advocating for the child’s best interests.²⁰

But the term “guardian” when applied to an LGAL could be misleading, because there are significant differences between a GAL and an LGAL. For instance, a GAL need not be an attorney, while an LGAL, as the term itself suggests, must be an attorney.²¹ A GAL, after conducting an independent investigation, “shall make a report in open court or file a written report of the investigation and recommendations.”²² The GAL’s report and any subsequent reports “may be received by the court and may be relied on to the extent of their probative value.”²³ Parties have a right to “examine and controvert reports received into evidence” and can cross-examine the GAL who prepared the report.²⁴

An LGAL, like a GAL, must conduct an independent investigation, but unlike a GAL, “[t]he court or another party shall not call [an LGAL] as a witness to testify regarding matters related to the case.”²⁵ Also, an LGAL’s “file of the case is not discoverable.”²⁶ And while the court must appoint an LGAL in a child protective proceeding, a court is not required to appoint a GAL in such proceedings.²⁷ The duties of an LGAL are far broader and more extensive than that of a GAL. And while a GAL owes his or her duty to the court and does not enjoy an attorney-client relationship with the child, an LGAL has an

attorney-client relationship with the child and owes his or her duty to the child. Perhaps “the starkest difference between the two is that unlike an LGAL, appointment of a GAL ‘does not create an attorney-client relationship’ and ‘[c]ommunications between that person and the guardian ad litem are not subject to the attorney-client privilege.’”²⁸

Notwithstanding the differences between the two roles, when determining a child’s best interests, there is an important overlap between the duties of the GAL and LGAL. “[A]n LGAL serves the same basic function as a GAL: independently investigating, determining, and representing the child’s best interests.”²⁹ But an LGAL must serve this purpose differently than a GAL. An LGAL is not tasked with simply assisting the court in determining the child’s best interests, but rather is tasked with the duty to *make* “a determination regarding the child’s best interests and advocate for those best interests.”³⁰ And an LGAL is obligated to serve as the “independent representative for the child’s best interests:” he or she may advocate for a position, call witnesses, file all necessary pleadings and papers, attend hearings and monitor the implementation of case plans and court orders and is otherwise “entitled to full and active participation in all aspects of the litigation.”³¹

Finally, an LGAL is not the child’s attorney in a traditional sense; he or she is an *independent* representative of the child’s best interests. Indeed, MCL 712A.13a separately defines an “attorney” for purposes of child protective proceedings who would function “in a traditional attorney-client relationship with the child.” This attorney would owe the child “the same duties of undivided loyalty, confidentiality, and zealous representation of the child’s expressed wishes as the attorney would to an adult client.”³² And when a child’s interests differ from the LGAL’s determination of the child’s best interests, the court has discretion to appoint an attorney – a traditional one – for the child.³³

Parental Alienation and the Child’s Preference

Both the “client centered” (LGAL) and the “best interests” (GAL) models assume that the child has the ability to consult with and provide voluntary, knowing and intelligent input and/or directions to the attorney. The “client centered” model goes a step further and assumes that the child-client also has the ability to direct an attorney as to a specific course of action. In turn, the LGAL must then advocate the child’s articulated position – *if it’s in the best interests of the child* – by first ascertaining the child’s wishes and then making them known to the court.³⁴ Parental alienation requires the professionals to acknowledge that children are susceptible to influence, intimidation and manipulation and the child’s wishes may not reflect the child’s actual position or best interests.³⁵ The National Association of Counsel for Children (NACC) – the largest child’s attorney organization in the United States – defines the role of the attorney for the child as a zealous advocate unless one of two exceptions exists: the child lacks the capacity to make a

reasoned choice or the child’s stated preference is “considered to be seriously injurious to the child.”³⁶ The child’s “voice” – his or her right to express a reasonable preference in a custody setting – is attached to the best interests of the child and “not to the rights of the contestants in the custody battle.”³⁷ And the child’s preference always “exclude[s] those preferences that are arbitrary or inherently indefensible.”³⁸

Alienation results in brainwashing the children. And “[l]oss is the greatest, all-encompassing feature of programming and brainwashing. The effects of losing not only the intact family, but also a parent, hang heavily over children, touching them in ways that can wreak havoc in many realms of life, both in the present and future.... This loss cannot be undone. Childhood cannot be recaptured. Gone forever is that sense of history, intimacy, lost input of values and morals, self-awareness through knowing one’s beginnings, love, contact with extended family, and much more. Virtually no child possesses the ability to protect himself or herself against such an undignified and total loss.”³⁹ The wish or desire of an alienated child to not see or have a relationship with the target parent is not normal; it is a result of brainwashing and programming, inherently indefensible and not in the best interest of the child. “The desires of young children, capable of distortive manipulation by a bitter, or perhaps even well-meaning, parent, do not always reflect the long-term best interest of the children.”⁴⁰

Consider this statement from a 15-year old male adolescent whose maternal history was replete with breastfeeding and full care by his mother: “*My mother abandoned us and never did anything for me, so I don’t need her now.*”⁴¹ Or, “[t]ell the judge I won’t see my Dad again. That’s that, I have legal rights you know. I’m 14.”⁴² Despite the fact that alienated children are so brainwashed and manipulated into rejecting the target parent, many professionals, including LGALs and GALs, often give significant weight to such preferences of alienated children. Excuses to not abide by court ordered parenting time are not only tolerated but, in fact, the target parent is often advised to show “empathy” by *not* seeking to enforce visitation. A target parent who has coached little-league sports teams and has been an active parent all his life is now asked to not show up at sporting events lest little Johnny gets upset and walks off the field. In such instances, an LGAL / GAL’s reliance on the alienated child’s position in custody or parenting time disputes not only continues the child’s exposure to parental alienation but in some cases, it solidifies it as well.⁴³ The Guardian becomes the *enabler* of alienation creating a vicious cycle and nefarious incentives for the alienating parent to continue to manipulate and influence his or her child’s position.⁴⁴ Moreover, now the alienating parent has an important ally: the child’s attorney, the LGAL or the court’s agent, the GAL. If the LGAL or GAL advocates for the favored parent to have custody because the alienated child wants the Guardian to do so, the favored parent in effect has two lawyers in the courtroom – his or her own and the Guardian.⁴⁵

Parental Alienation, Diminished Capacity and a Child's Best Interests

We generally do not trust children to make judgments in their best interests.⁴⁶ In an alienation situation, the need for caution is even greater. Under the influence of an alienator, the affected child may not be cognitively or psychologically able to make a judgment in his or her best interests.⁴⁷ Courts recognize that in an alienation setting children “are impressionable, have social deficits, and could be manipulated.”⁴⁸ The professional standards that apply to lawyers who represent children in such cases also underscore this concern:

“One of the most difficult ethical issues for lawyers representing children occurs when the child is able to express a position and does so, but the lawyer believes that the position chosen is wholly inappropriate or could result in serious injury to the child....A child may desire to live in a dangerous situation because it is all he or she knows, because of a feeling of blame or ...because of threats or other reasons to fear the parent.”⁴⁹

In an alienation case, a GAL or LGAL must strive to assess whether the child's wish is a result of brainwashing or programming by the alienating parent or his or her own independent judgment, prior to making a recommendation to the court or advocating in favor of the child's wish.⁵⁰ The Guardian must determine whether the child's preference is reasonable, whether the child is psychologically able to make a judgment and whether the child is able to exercise his or her judgment without influence, coercion, manipulation or exploitation.⁵¹

The Model Rules of Professional Conduct and Michigan Rules of Professional Conduct provide that when a client is not able to make adequately considered decisions as part of the attorney-client relationship, the client is said to be functioning “under a disability” and has diminished capacity.⁵² While the LGAL still owes the child-client with diminished capacity a duty of zealous advocacy, the attorney also has a duty to prevent the client from pursuing decisions that are potentially harmful.⁵³

Courts too are required to take into consideration the child's reasonable preference when evaluating the best interests factors for custody determination.⁵⁴ But the key word here is *reasonable*. It's the reasonable preference that's considered, not just a naked, biased, ill-conceived and absolute preference. Where a child expresses “strong and alarmingly negative opinions about [a parent] with little or no explanation” or cannot provide any concrete or consistent examples of bad conduct by a parent to justify his or her rejection of the parent, the child's preference is not reasonable.⁵⁵ And while a child over the age of six is presumed to be capable of forming a reasonable preference, “such presumed capacity can be compromised by surrounding circumstances.”⁵⁶ Circumstances leading to compromising a child's presumed capacity could include undue influence, coaching, and manipulation – all typical tools

of the trade of an alienating parent. In severe alienation cases, it is not uncommon to find the children saying the “right” words that suggest “abuse,” but also demonstrating the appropriate affect (tears, grief and/or anguish).⁵⁷

In such circumstances, what constitutes the child's best interests is ultimately a “professional judgment call” made by the LGAL or GAL.⁵⁸ This “call” must be made independent of the child's wishes, although those wishes could be considered as part of the GAL or LGAL's determination.⁵⁹ When required to make this “call,” although an LGAL functions like an attorney and its duties go beyond those of a GAL, its duties ultimately conform to those of a GAL: investigating and independently determining the child's best interests and then serving those interests.⁶⁰

Even commentators who have raised concerns about a child's attorney advocating for a result “they themselves prefer” from a subjective standpoint rather than advocating what the child wants, concede that “there are certain hierarchical needs which do not particularly involve the attorney's subjective values, the child's physical and emotional safety being chief among them.”⁶¹ Also included in these hierarchical needs are “freedom from abuse or neglect” and “retaining ties among siblings” and a parent.⁶² And, these commentators also concede that a child “may not be able to appreciate that a ‘preferred’ parent is negligent, abusive, or irresponsible, and therefore an inappropriate physical custodian.”⁶³

How should a Guardian “make the call” in order to determine whether the child has diminished capacity due to parental alienation?

Endnotes

- 1 See Linda D. Elrod, *Client-Direct Lawyers for Children: It is the “Right” Thing to Do*, 27 Pace L. Rev. 869, 905 (2007).
- 2 Parental alienation is “[t]he process of one parent trying to undermine and destroy to varying degrees the relationship that the child has with the other parent.” *Meadows v. Meadows / Henderson*, 2010 WL 3814352 (Mich.App.) (Unpublished). Also see, Ashish Joshi, Parental Alienation: The Problem, *Michigan Family Law Journal*, October 2016; Ashish Joshi, Parental Alienation: Remedies, *Michigan Family Law Journal*, November 2016
- 3 Jamie Rosen, *The Child's Attorney and the Alienated Child: Approaches to Resolving the Ethical Dilemma of Diminished Capacity*, Family Court Review, Vol. 51 No. 2. 330 (April 2013).
- 4 Rosen, *supra*, 330.
- 5 Joshi, *supra*, Parental Alienation: The Problem, pg. 8 (“...the distinguishing feature of parental alienation is that the child's rejection of the target parent is without legitimate justification.”). In cases where the rejected parent has a documented history of domestic violence, alcoholism, drug abuse, abandonment, etc. the damage to the child-parent relationship could be due to the parent's own actions or omissions.

- 5 Rosen, *supra*, 331; *Also see Harner v. Harner*, 2018 WL 521863, (Mich., January 23, 2018) (...there were reasons to believe that the children's claims of neglect and abuse were not founded on actual experiences...[and] suggested coaching by [the mother]).
- 6 Brian Ludmer, *Understanding Ethical Issues in a Parental Alienation Case*, PASG Newsletter, Issue 3, Vol. 4. 9 (July 2018).
- 7 *Id.*
- 8 "Mild" means that the child resists seeing the rejected parent, but when parenting time ("PT") occurs, the child enjoys the experience and relates to the rejected parent in a healthy manner. "Moderate" means that the child resists seeing the rejected parent, and when PT occurs, the child is oppositional and uncooperative with that parent. "Severe" means that the child adamantly and persistently refuses to have parenting time with the rejected parent. *See* Baker, A., Fine, P., Educating Divorcing Parents: Taking them Beyond the High Road in Baker, A. and Sauber S., (Eds.) *Working with Alienated Children and Families: A Clinical Guidebook*, Routledge Press, New York (2013).
- 9 *See* Ann Haralambie & Deborah Glaser, *Practical and Theoretical Problems with the AAML Standards for Representing "Impaired" Children*, Journal of the American Academy of Matrimonial Lawyers, Vol. 13. 57, 75 (Summer 1995). ("One of the major benefits of requiring that children's attorneys be specially trained [e.g. A.A.M.L. Standard 1.2] is that attorneys will have particular competence to fulfill advocacy roles which are somewhat different than those ordinarily performed by attorneys for adult clients.")
- 10 MCL 722.27.
- 11 *Farris v. McKaig*, __ N.W.2d __ (2018), 2018 WL 2269775, *2 (Mich. App., May 17, 2018) *citing* *King v. Emmons*, 283 Mich. 116, 124-125, 277 N.W. 851 (1938); *Ford Motor Co. v. City of Woodhaven*, 475 Mich. 425, 440, 716 N.W.2d 247 (2006).
- 12 Black's Law Dictionary (10th ed.)
- 13 *Id.*
- 14 MCL 712A.13a(f).
- 15 MCL 700.5213(4).
- 16 MCL 712A.17d.
- 17 MCL 712A.17d(1)(h).
- 18 *See Farris v. McKaig, supra*, *5-6, for the history and context in which LGALs were created.
- 19 MCL 712A.17d(1) (*emphasis added*). While these duties fall within the chapter dealing with child protective proceedings, the laws dealing with child custody proceedings specifically provide that the duties and powers stated above apply to a LGAL appointed under child custody proceedings as well. MCL 722.24(2)
- 20 *Farris v. McKaig, supra*, *3. In fact, in child protective proceedings, the LGAL "satisfies the dictionary definition of 'guardian ad litem.'" *Id.*
- 21 MCL 712A.13a(1)(f) and (g).
- 22 MCR 5.121(C).
- 23 MCR 5.121(D)(1).
- 24 MCR 5.121(D)(2)(a)-(c).
- 25 MCL 712A.17d(1)(b).
- 26 MCL 712A.17d(3).
- 27 MCL 712A.17c(7) and (10).
- 28 *Farris v. McKaig, supra*, *3 citing MCR 5.121(E)(1).
- 29 *Id.*, at *4.
- 30 MCL 712A.17d(1)(i).
- 31 MCL 712A.17d(1)(b) and (g) and (i).
- 32 MCL 712A.13a(1)(c).
- 33 MCL 712A.17d(2). Of course, in an alienation setting, having two advocates represent the child (or one for the child and another for the child's best interests) might be more expensive and traumatic for the child rather than helpful. *See* Rosen, *supra*, at 335.
- 34 Rosen, *supra*, at 333.
- 35 ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, Section A-1.
- 36 Rosen, *supra*, citing William Wesley Patton, *Viewing Child Witnesses Through a Child and Adolescent Psychiatric Lens: How Attorneys' Ethical Duties Exacerbate Children's Psychopathology*, 16 Widener L. Rev. 369, 382 (2010).
- 37 *Maeir v. Maier*, 311 Mich. App. 218, 224; 874 N.W.2d 725 (2015).
- 38 *Id.*, *citing Pierron v. Pierron*, 282 Mich. App. 222, 259, 765 N.W.2d 345 (2009), *aff'd by and quoted in Pierron*, 486 Mich. At 92, 782 N.W.2d 480.
- 39 Stanley Clawar and Brynne Rivlin, *Children Held Hostage: Identifying Brainwashed Children, Presenting a Case and Crafting Solutions* 164 (2nd ed. 2013).
- 40 *Young v. Young*, 628 N.Y.S.2d 957 (1995).
- 41 Clawar and Rivlin, *supra*, at 1-26 (Brainwashing and Programming).
- 42 *Id.*, at 335.
- 43 Debra Weiss, *Appeals Court Criticizes "Judicially Created Parental Alienation" in Case of Baby with Broken Ribs*, *ABA Journal*, May 2018, at <http://www.abajournal.com/news/article/appeals-court-criticizes-judicially-created-parental-alienation-in-case-of/>.
- 44 Barbara House, *Considering the Child's Preference in Determining Custody: Is It Really in the Child's Best Interest?* 19 J. Juv. L. 176, 181 (1998).
- 45 Rosen, *supra*, at 333.
- 46 Referee Marie Kessler, Role of the Guardian ad Litem, *Guardian ad Litem Handbook for Divorce Practice*, State Bar of Michigan Family Law Section (Edited by Connie Thacker & Donna Mobilia), pg. 1 ("There is a myth in the family law arena that there is a magic age when the wishes of the child become all controlling and there is no further need to attempt to address the best interests of the child or even expect the child to follow the rules and wishes of his or her home let alone the court....

there is no such magic number.”)

Nicholas Bala, *Child Representation in Alberta: Role and Responsibilities of Counsel for the Child in Family Proceedings*, 43 Alta. L. Rev. 845, 861 (2006).

47 *Id.*

48 *Harner v. Harner*, 2018 WL 521863, (Mich., January 23, 2018) (due to mother’s alienating behavior which included undue influence and coaching, the “moral fitness” factor under MCL 722.23(f) strongly favored father).

49 *Standards of Practice for Lawyers Representing Children in Custody Cases*, ABA Section of Family Law, IV(C)(3), Commentary (2003).

50 Barbara Jo Fidler & Nicholas Bala, *Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums*, 48 Fam. Ct. Review. 10, 32 (2010). Also, MCL 712A.17d(1)(d) requires an LGAL to “assess” the child’s needs and wishes, not just listen to the child’s wishes or demands.

51 Rosen, *supra*, citing Bala, *supra* at 861; Connie Thacker, *The Child: Michigan Protocol, Guardian ad Litem Handbook for Divorce Practice*, State Bar of Michigan Family Law Section (Edited by Connie Thacker & Donna Mobilia), 16.

52 Model R. P. C. 1.14; MRPC 1.14; *also see* Standards of Practice for Lawyers Representing Children in Custody Cases, ABA Section of Family Law (2003), IV(C)(1).

53 Barbara Jo Fidler, et. al., *Children Who Resist Postseparation Parental Contact: A Differential Approach for Legal and Mental Health Professionals* 4, 167 (2013) (“Advocating uncritically the influenced and manipulated views of children is unhelpful and irresponsible.”).

54 MCL 722.23(i).

55 *Harner v. Harner, supra*, *7 (Mich., January 23, 2018).

56 *Id.*, citing *Maier v. Maier*, 311 Mich. App. 218, 224-225; 874 N.W.2d 725 (2015).

57 *See Prisk v. Prisk*, 2017 WL 2131511, *5 (Mich. App., May 16, 2017) (“The trial court conducted an in-camera interview of [the child]. [The child] communicated to the court that [father] had sexually abused her when she was four and again when she was seven.” After three separate CPS investigations into allegations of sexual abuse against the father, none of which were substantiated, the court found the child to have been “coached” and never asked her about her custodial preference during a best interests change of custody hearing). *Note*: Unpublished opinions are not precedentially binding, MCR 7.215(C), but they may be cited by a party if relevant to the issues presented. At times, published opinions on propositions of law, unique facts and mental health issues involving parental alienation are just not available. In the author’s experience, courts usually welcome not only unpublished opinions but also opinions from sister states if they are significantly pertinent to the issues presented before the court.

58 *Farris v. McKaig, supra*, *3.

59 In contrast, an attorney for the child, if appointed, advocates for the child’s wishes or interests, regardless of what those interests are.

60 *Farris v. McKaig, supra*, at *5.

61 *See* Ann Haralambie & Deborah Glaser, *Practical and Theoretical Problems with the AAML Standards for Representing “Impaired” Children*, J. Am. Acad. Matrimonial Law, Vol. 13, 57, 75 (Summer 1995).

62 *Id.*

63 *Id.* at 89.



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PARENTAL ALIENATION AND THE ROLE OF GALs AND LGALs (Part Two of Two)

BY ASHISH JOSHI

Making the “Call”: Determining Whether the Child has Diminished Capacity

Unfortunately, there is no exhaustive list of factors that must be satisfied before a child-client is determined to suffer from a disability or lack capacity to inform a GAL or instruct an LGAL.¹ Each decision is based on its own unique set of facts and circumstances. “Just as adults may lack the capacity to give competent testimony because of infirmity, disability, or other circumstances, so may a child’s presumed capacity be compromised by circumstances peculiar to that child’s life.”² Here are some factors that could be considered by a Guardian: the child’s developmental stage, the child’s expression of a relevant position, the child’s individual decision-making process, the child’s ability to understand consequences, the child’s age, degree of maturity, intelligence, ability to communicate, the relationship that existed between the child and the target parent prior to separation or filing of divorce between the parents and finally the expressed preference: the degree or magnitude of rejection of the target parent.³

As one commentator advocates:

“The best way for an attorney to make the determination of whether or not the child client has diminished capacity is to use every tool available to him or her. In order to represent a client competently and diligently, the attorney must interview his or her client, as well as the parents and other family members, doctors, teachers, therapists, or friends as part of his or her initial investigation.”⁴

Where a child has been subjected to coaching, manipulation, emotional distress in going through unsubstantiated police or CPS investigations and traumatic visitation exchanges, it is likely that the child’s “fragile emotional state” coupled with the alienation has “rendered him unable ... to form a reasonable preference” – and has thereby diminished his or her capacity.⁵ If the LGAL makes a determination that the child-client has diminished capacity, the attorney must decide what action to take as an advocate for the child’s best interests. The LGAL should consider alerting the court of this issue and evaluate whether and to what extent to inform the court as to the child’s wishes and preferences in keeping with the law govern-

ing attorney-client privilege.⁶ Alerting the court of the child’s diminished capacity in a case of parental alienation helps avoid a situation where the court relies on a child’s preference that has been influenced by an alienator and/or others and is not reflective of the child’s independent judgment.⁷

The Model Rules of Professional Conduct, the American Bar Association and the National Association of Counsel for Children all agree that when the child lacks the capacity for knowing, voluntary and considered judgment or the child’s expressed preference would place the child at risk of substantial harm, the attorney may substitute judgment.⁸ The attorney should explain to the court that (1) given the alienation, pathological alignment with one parent and alienation from the other strips the child of a “genuine voice;”⁹ and (2) that the “child’s voice”, in reality, reflects “the words, attitudes, and beliefs of the parent who exercises the most influence over him or her.”¹⁰ The attorney should explain to the court what he or she is advocating for the child, even if painful and contentious and the child doesn’t agree.¹¹

Guardians and Immunity

GALs, when acting within the scope of their authority, are granted immunity from civil liability.¹² LGALs, for purposes of immunity analysis, are considered a “subset” of GALs and, therefore, are entitled to governmental immunity as well.¹³ Immunity serves a laudable intent: independent investigation and determination – free from outside influence – of the child’s best interests. “Fear of liability to one of the parents can warp judgment that is crucial to vigilant loyalty for what is best for the child; the guardian’s focus must not be diverted to appeasement of antagonistic parents.”¹⁴ But that doesn’t mean that GALs or LGALs have blank checks to operate as to their whims and fancies with no oversight or accountability. Judicial mechanisms remain in place to prevent abuse, misconduct and irresponsibility of these professionals. First, a GAL or LGAL’s immunity only attaches to conduct within the scope of the professional’s duties.¹⁵ Second, the court monitors a GAL or LGAL’s performance and can remove a rogue or incompetent professional if necessary.¹⁶ Third, a Guardian is simply another advocate in our adversary system; whatever position a Guardian takes during a proceeding

can be addressed and rebutted by the other parties “thereby ensuring that the trial court will be apprised of the facts and can issue an informed decision.”¹⁷ Finally, a GAL (if an attorney) and an LGAL may be subject to punishment by the Attorney Grievance Commission¹⁸ if his or her conduct fails to meet the standards set forth in the Michigan Rules of Professional Conduct.

A Suggested Checklist of Best Practices

Below are some suggestions to the GALs / LGALs who have taken on or are about to take on the responsibility of assisting the court and/or advocating for the child’s best interests in a case involving parental alienation. These are not just “wouldn’t it be nice in an ideal world” suggestions; rather, these suggestions are in keeping with the important quasi-judicial functions that GALs discharge and LGALs’ obligation to function as competent, responsible officers of the court in advocating for the child-client’s best interests:¹⁹

1. One of the oldest heuristics in medicine is *primum non nocere* – “First, to do no harm.”²⁰ The first rule of the Michigan Rules of Professional Conduct mandates “competent representation.”²¹ An attorney should not handle a legal matter which the lawyer knows or should know that the lawyer is not competent to handle, without associating with a lawyer who is competent to handle it. Before accepting an appointment as a GAL / LGAL in a case involving allegations of parental alienation, ask yourself: are you competent to handle the assignment? Have you handled such cases before? Are you current on the professional literature on the topic? And last but not least, are you willing to put in the significant time and effort that will undoubtedly be required on your part to do your job?
2. Fools rush in where angels fear to tread. Don’t rush in with “solutions.” For instance, giving a “speech” in an attempt to “get through” to an alienating parent will not result in an epiphany or help the situation.²² Nor will sending off the kids to “therapy.” In fact, it would be difficult to find a more common yet *egregious* blunder that GALs / LGALs routinely commit than advocating for what amounts to traditional “reunification” therapy for parental alienation.²³ Not only are such therapies known to be ineffective, they are known to be potentially harmful – they “validate” an alienated child’s distorted view of the world, encourage the child to express grievances, and give the child some “control” or choice while advising the rejected parent to “listen, empathize, validate, and apologize (or even to ‘find something to apologize for’).”²⁴ Traditional therapy is *contraindicated*²⁵ and typically makes things worse.²⁶ Even when provided under court order, such therapies are of little benefit.²⁷ In fact, if you are an LGAL, you have a duty to *stop* such therapy if it’s not accomplishing its intended purpose.²⁸
3. Keep yourself abreast of the latest peer-reviewed literature. Parental alienation is a dynamic area and the research is constantly evolving. Also, it is *profoundly* counterintuitive.²⁹ This is not merely a warning to “be careful.” Rather, professionals who have thoroughly studied this area caution us how everything about parental alienation is so profoundly counterintuitive that many professionals will almost always make major errors if they attempt to solve problems or make critical judgments using their usual professional intuition.³⁰ Using intuition to solve complex problems – “I’ve been doing this for a long time” or “have seen many cases” – is rarely, if ever, adequate.³¹ In cases involving parental alienation, it can be downright disastrous.
4. Understand that parental alienation meets the criteria for child abuse: It poses severe risks to children in developing major physical and mental problems in adult life and can cause structural damage to their brain.³² Also understand that “time is a major enemy” in alienation cases.³³ The top priority is to protect the child from further abuse. Focus on ensuring the child’s safety and to protect him or her from ongoing alienation (instead of focusing on the child’s relationship with the rejected parent).
5. Do not prejudge the case. Familiarize yourself with the facts. Thoroughly review court records, FOC records, police reports, CPS reports, school records, medical, mental-health and therapy records. These records are protected by both federal and state confidentiality laws which may need to be addressed before access is obtained. A detailed and thorough record review will help you get a sense of the people involved and the real issues in the case.
6. Meet and assess the parties/parents. Remember: “Alienating parents tend to present well; targeted parents tend to present poorly.”³⁴ Generally, alienating parents present with the Four C’s: cool, calm, charming, and convincing.³⁵ That is because effective alienators tend to be master manipulators who are highly skilled at managing impressions, especially initial impressions. “These traits are usually related to an underlying personality disorder, typically of the borderline, narcissistic, and/or sociopathic types.”³⁶ In contrast, targeted parents tend to present with the Four A’s: anxious, agitated, angry and afraid.³⁷ That is because they are trauma victims, attempting to manage a horrific family crisis while being attacked by professionals who fail to recognize the counterintuitive issues.³⁸ The alienating parent believes that the child has no need for a relationship with the other parent. The alienating parent may have employed techniques such as badmouthing the target parent, limiting or interfering with parenting time, mail or phone contact, interfering with information (e.g., school or medical records), fostering an unhealthy alliance

with the child (“enmeshment”) and emotional manipulation.³⁹ The alienating parent may *say* the right words - “*Of course, I want my child to have a relationship with the other parent!*” - but their actions speak otherwise. The alienating parent will generally refuse to listen to positive remarks about the target parent and will quickly discount any happy memories or experiences as trivial and unimportant.⁴⁰ But he or she will be quick to portray the target parent as dangerous and exaggerate negative attributes about the other parent, including unfounded, false or fabricated allegations of sexual, physical, and/or emotional abuse.⁴¹ On the other hand, the targeted parent may be very frustrated with the alienating behaviors of the favored parent and the child’s rejection and his or her frustration is often misperceived as “anger issues” or emotional imbalances. Poor parenting abilities also contribute to the target parent’s victimization. Think about suggesting a coach for the target parent.⁴²

7. Do not mistake pathological enmeshment between the favored parent and the child for healthy bonding. A pathologically dependent parent treats the child in a manner that is not age-appropriate, such as treating the child as a “friend” or companion, rather than as a child. This involves severe boundary violations of the child by the parent to the point that the parent not only violates the child’s boundaries, but *erases* them.⁴³ Enmeshment is a form of child abuse.⁴⁴
8. Meet and *assess* the child. Don’t just go by the child’s words, wishes or affect. In an alienation setting, the child accepts as true the “delusion of falsehood created by the alienating parent, leading to a belief that he or she cannot show or receive love from both parents.”⁴⁵ The child’s behavior consists of a campaign of unfair criticism towards the targeted parent; weak, irrational and at times downright ridiculous justifications for rejection; absence of guilt or remorse (“splitting”⁴⁶); and the presence of borrowed scenarios. An alienated child will deny good or positive experiences with the targeted parent. And the only solution acceptable to the child is for the target parent to “leave him or her alone.” In contrast, abused children develop and maintain attachment relationships with their abusive parents.⁴⁷
9. Remember that in an alienation case, perception is not reality; perception is often a *distortion* of reality. “The single most important element in uncovering the content, intensity, and impact of programming-and-brainwashing in children is *researching the social history of the children*.”⁴⁸ Conduct a series of interviews with people who have varying perspectives. Observe the child in the context of both parental environments for periods of time that would allow you to observe interaction that is more than situ-

ational (as in a professional office) or momentary (this is called participant observation). You might be surprised to see the child who professes a fear of his father (the target parent) gravitate to him, laugh with him, sit on his lap, initiate activities and in other ways counter the assertion of fear and desire not to be with him. You may also be surprised to observe that upon returning to the mother (the alienating parent), the child would inform her that she “did not have a good time” or that she was just “faking it.”⁴⁹ Your careful observation may reveal facts that are often different from what you hear or what you obtain from the child.

10. Watch out for the alienating parent’s repeated and constant interference in parenting time of the target parent. Interference could appear “innocent” such as sending gifts to the children during the other parent’s visitation, frequent calls or texts to the children, to more substantial interference such as asking police officers to conduct “welfare checks.” An alienating parent is “alarmist, overprotective, intrusive, controlling and [feels] compelled to check on the children whenever they [are]” in target parent’s care.⁵⁰ Attempts to “protect” the children from “domestic violence” or “sexual assault” could be a concerted and continued effort to alienate the children.⁵¹ Also watch out for frequent and/or repeated allegations of abuse – emotional, physical and/or sexual – made by or orchestrated by the alienating parent against the target parent. If the allegations are found to be unsubstantiated by the CPS, think about obtaining appropriate court intervention.⁵² Alienators abuse the system; don’t get sucked into it.
11. If court-ordered parenting time, visitation or counseling is not followed by the target parent and/or the child, do not advocate a “cooling off” period. Rather, attempt to get appropriate court intervention to enforce court-ordered parenting time, counseling and other court orders. A parent’s “parenting time rights might become meaningless if a court cannot enforce a parenting time schedule through the use of its contempt powers.”⁵³ Alienators tend to harbor and demonstrate low respect for the judicial system.⁵⁴ “They will, directly or indirectly, intentionally or unintentionally, undermine any directive that prevents them from challenging or controlling the child’s relationship with the target parent.”⁵⁵ Court orders must have teeth and must be enforced; “vague warnings have virtually no impact” in an alienation case.⁵⁶ Court orders are enforceable through a variety of mechanisms, such as criminal sanctions, suspension of alimony or maintenance, tort action for custodial interference, and orders of protection.⁵⁷ Your job is not to be a spectator watching the repeated violations of court orders. If you are a GAL, your duty is to assist the court to protect the best interests of the child; if an LGAL, it’s to serve as the independent representative for

the child's best interests and preserve the relationship with the target parent.

12. Challenge your assumptions and/or biases. Debunk the myths. It is a common myth that adolescents' stated preference should dominate custody decisions – even though the adolescent has been alienated.⁵⁸ It is also a common myth that courts cannot enforce orders for parent-child contact against an alienated teen's wishes.⁵⁹ Or that children who irrationally reject a parent but thrive in other respects (such as in school or with peers) need no intervention.⁶⁰ These common false beliefs – the *woozle* effect⁶¹ – have been repeatedly debunked and these assumptions have failed to hold up in the light of research, case law, or experience.
13. In a case of severe parental alienation, think about advocating change of custody or removing the child from the alienating parent's manipulation and control. Understand that the peer-reviewed research demonstrates that the risks of separating a severely alienated child from an alienating parent are very low, and the risks of permitting such a parent to remain in contact with such a child are very high.⁶² Moreover, upon removal, the risks go down, not up. Don't buy into "sensational predictions lacking a basis in established scientific and professional knowledge" on what may happen if an alienated child is separated from the alienating parent.⁶³ Also acknowledge the fact that "sending a child for 'reconciliation therapy' for an hour a week is never going to work if the child is then returned to the [alienating parent] for the other 167 hours in that week."⁶⁴ Educate yourself on psycho-educational programs that draw on social science research to help alienated children and adolescents adjust to court orders that place them with a parent they claim to fear or hate.⁶⁵

GALs and LGALs must realize that parental alienation calls for urgent and effective court intervention. Often it results in major life decisions for a child, such as those related to custody, parental access, child protection and/or mental health treatment intervention. These decisions should not be advocated or made by those who lack adequate skill, experience or expertise. "Those who attempt to manage such cases using intuition – even professional intuition – instead of a deep knowledge of the science are likely to make catastrophic errors."⁶⁶ On the one hand, a GAL's/LGAL's failure to properly investigate the case and advocate for the child's best interests could result in significant harm and may constitute professional negligence.⁶⁷ On the other hand, a diligent, competent, skilled and experienced GAL / LGAL can make an enormous difference in helping the court understand the phenomenon of parental alienation and assist the court in crafting and enforcing appropriate remedies in the best interests of the child.

About the Author

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Endnotes

- 1 Model Rules of Professional Conduct, Rule 1.14, comment 5.
- 2 *Maier v. Maier*, 311 Mich. App. 218, 225; 874 N.W.2d 725, *5 (2015).
- 3 Rosen, *supra*; *Representing Children: Standards for Attorneys for Children in Custody or Visitation Proceedings with Commentary*, 22 J. Am. Acad. Matrimonial Law, 227, 239 (2009).
- 4 Rosen, *supra*, at 335.
- 5 *Maier v. Maier*, 311 Mich. App. 218, 226; 874 N.W.2d 725 (2015).
- 6 MCL 712A.17d(1)(i).
- 7 Benjamin Garber & Laura Landerman-Garber, *How Should the Child's Voice be Heard When Parental Rights and Responsibilities are Contested?* 47 N.H.B.J. 46, 47 (2006).
- 8 Rosen, *supra*, at 336 citing ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 96-404 (1996), *Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases*, Section B-2).
- 9 Richard Warshak, *Bringing Sense to Parental Alienation: A Look at the Disputes and the Evidence*, 37 Fam. L. Q. 273, 375 (2003).
- 10 Jonathan Gould & David Martindale, *Including Children in Decision Making About Custodial Placement*, 22 J. Am. Acad. Matrimonial Law 303, 310 (2009).
- 11 Barbara Jo Fidler, et. al., *Children Who Resist Postseparation Parental Contact: A Differential Approach for Legal and Mental Health Professionals* 4, 168 (2013); also see *Whitley v. Leonard*, 772 N.Y.S.2d 620 (2004).
- 12 MCL 691.1407(6).
- 13 *Farris v. McKaig*, __ N.W.2d __ (2018), 2018 WL 2269775 (Mich. App., May 17, 2018).
- 14 *Farris, supra*, citing *Short by Oosterhous v. Short*, 730 F.Supp. 1037, 1039 (D Colo, 1990).
- 15 MCL 691.1407(6).
- 16 MCR 3.915(2), MCL 712A.17(c)(9).
- 17 *Farris, supra*, FN 4.

- 18 See e.g., *Grievance Administrator v. Carson*, Case No. 02-53-6A (September 5, 2002) (revocation of license to practice law for failure to visit child, consult with social worker, visit foster parent, establish a permanency plan for the child, or make reasonable efforts to expedite the proceedings)
- 19 See Hon. Donna J. Martinson, *One Case-One Specialized Judge: Why Courts Have an Obligation to Manage Alienation and Other High-Conflict Cases*, Family Court Review, Vol. 48, No. 1. 181 (January 2010).
- 20 Steve Miller, *Why Do Specialists Say that Parental Alienation is Counterintuitive, Part 2*, PASG Newsletter, Vol. 3, No. 4. 17 (July 2018).
- 21 MRPC Rule 1.1; also see Standards of Practice for Lawyers Representing Children in Custody Cases, ABA Section of Family Law (2003), III(A).
- 22 Michelle Lowrance, A Judge's Perspective on Parental Alienation, *Parental Alienation: The Handbook for Mental Health and Legal Professionals*, (Demosthenes Lorandos, et. al, editors) (Charles C. Thomas), 502, 511 (2013).
- 23 Steve Miller, *supra*, Part 2, at 17.
- 24 *Id.*
- 25 *Id.* at 18 ("....the word *contraindicated* does not mean 'not indicated.' It means *forbidden*. If a patient is allergic to penicillin, then penicillin is contraindicated. In the face of a penicillin allergy, it would not be proper to prescribe penicillin to see what happens.").
- 26 Clawar and Rivlin, *supra*; also see Richard Warshak, *Ten Parental Alienation Fallacies That Compromise Decisions in Court and in Therapy*, Professional Psychology: Research and Practice (2015).
- 27 Jonathan Gould, et. al., *Is the Child's Therapist Part of the Problem? What Judges, Attorneys, and Mental Health Professionals Need to Know About Court-related Treatment for Children*, Family Law Quarterly, Vol. 37, No. 2. 241-271 (Summer 2003); also see *Harner v. Harner*, 2018 WL 521863, FN 4 (Mich., January 23, 2018) ("The therapist...adopted defendant's view of events and uncritically accepted every statement that the children made, regardless of the mountain of evidence suggesting that there was no sexual abuse.")
- 28 MCL 712A.17(d)(1)(j).
- 29 Steve Miller, *Why Do Specialists Say that Parental Alienation is Counterintuitive, Part 1*, PASG Newsletter, Vol. 3, No. 3. 19 (May 2018).
- 30 *Id.*
- 31 *Id.* ("....people who attempt to use intuition to solve counterintuitive problems tend to have great confidence in their conclusions, whether right or wrong.").
- 32 Steve Miller, *supra*, Part 2, at 17; also see Robert Anda, et. al., *The Enduring Effects of Abuse and Related Adverse Experiences in Childhood*, European Archives of Psychiatry and Clinical Neuroscience, Vol. 256 No. 3. 174-186 (2006). The American Professional Society on the Abuse of Children (APSAC) has endorsed the premise that causing parental alienation is child abuse.
- 33 See Walters & Friedlander, *When a Child Rejects a Parent: Working with the Intractable Resist / Refuse Dynamic*, Family Court Review, Vol. 54 No. 3. 6 (July 2016).
- 34 Steve Miller, *supra*, Part 1, at 19.
- 35 *Id.*
- 36 *Id.* at 20.
- 37 *Id.*
- 38 *Id.*
- 39 Barbara Jo Fidler & Nicholas Bala, *Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums*, 48 Fam. Ct. Review. 10, 19 (2010).
- 40 Rosen, *supra*, at 332.
- 41 *Id.*
- 42 See e.g., Randy Flood, *How to Respond to Parental Alienation*, <https://menscenter.org/respond-to-parental-alienation/>
- 43 *Id.*
- 44 See Stuart Hart, et. al., Psychological Maltreatment of Children, *The APSAC Handbook on Child Maltreatment* 145-162 (4th ed. 2018).
- 45 Fidler & Bala, *supra*, at 15.
- 46 "Splitting" is a psychological phenomenon that is considered a hallmark behavioral symptom of parental alienation. Alienated children demonstrate *splitting*, i.e., the favored parent is presented as all good or "perfect" versus the target parent is presented as all bad or "horrible" in all respects. Splitting does *not* typically occur in children who have been abused, neglected or otherwise mistreated.
- 47 See Amy Baker, et. al., *Foster Children's Views of their Birth Parents: A Review of Literature*, Children and Youth Services Review, 67, 177-183 (2016).
- 48 Clawar and Rivlin, *supra*, at 321(emphasis in original).
- 49 *Id.*
- 50 *Harner v. Harner*, 2018 WL 521863, (Mich., January 23, 2018).
- 51 See *Prisk v. Prisk*, 2017 WL 2131511, *5 (Mich. App., May 16, 2017).
- 52 *Harner, supra*, *1.
- 53 *Porter v. Porter*, 285 Mich. App. 450, 457; 776 NW2d 377 (2009). In fact, in a recent unpublished decision, the Court of Appeals found a trial court had abused its discretion when it refused to issue a finding of contempt and incarcerate a party who had refused to comply with a parenting time order. *Magryta v. Magryta*, unpublished per curiam opinion of the Court of Appeals (Docket No. 336433, June 20, 2017).
- 54 Clawar and Rivlin, *supra*, at 335.
- 55 *Id.*, at 336.
- 56 *Id.*
- 57 See e.g. *Lauren R. v. Ted R.*, No 293699-02, slip op. (N.Y. Sup. Ct., May 25, 2010).

- 58 Richard Warshak, *Ten Parental Alienation Fallacies That Compromise Decisions in Court and in Therapy*, Professional Psychology: Research and Practice, 6-7 (2015).
- 59 *Id.*
- 60 *Id.*, at 7.
- 61 *Id.*, at 1. See also A. A. Milne, *In Which Pooh and Piglet Go Hunting and Nearly Catch a Woozle*, (1926). *Winnie The Pooh* (1st ed.).
- 62 *Id.*, at 10.
- 63 *Id.*
- 64 Clawar and Rivlin, *supra*, pg. xx-xxi.
- 65 Richard Warshak, *Family Bridges: Using Insights from Social Science to Reconnect Parents and Alienated Children*, 48 Fam. Ct. Rev. 48 (2010); Matthew Sullivan et. al., *Overcoming Barriers Family Camp: A Program for High-Conflict Divorce Families Where a Child is Resisting Contact with a Parent*, 48 Fam. Ct. Rev. 116 (2010).
- 66 Steve Miller, *supra*, Part 2, pg. 18-19.
- 67 See Ann Haralambie & Deborah Glaser, *Practical and Theoretical Problems with the AAML Standards for Representing "Impaired" Children*, Journal of the American Academy of Matrimonial Lawyers, Vol. 13, 57, 92 (Summer 1995); also see Lawrence Snyder & Alan May, *Guardian ad Litem Immunity Revisited: Recent History*.

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