

Custody Newsletter #9 1993

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An INFORMAL forum for professionals in the custody field ISSUE # 9 - 1993

Welcome to the Custody Newsletter. Our tone is informal; we WANT contributions based on your clinical experiences, as well as more formal presentations.

Second, we solicit input from members of all professions. This is why it is not mandatory that any specific References format be followed e.g., the bibliographic notation system of the American Psychological Association, the American Psychiatric Association, etc.

In general, we favor brief articles, contributions ranging from one-half of a typewritten page to about eight typewritten pages.

Issue #9 of the CN is devoted entirely to the important area of the "parent alienation syndrome" in the form of an excellent article by **Peggie Ward**, Ph.D. (a member of the Advisory Council of the Professional Academy of Custody Evaluators or PACE) and J. Campbell Harvey, J.D.

I would only add to this very complete work that we, as custody evaluators, must be careful not to look only at the presence or absence of alienating ploys on the part of a parent. Our primary job as evaluators (a therapist function is to intercede and make change) is to recognize what I call any NBOAI (not-based-on-actual-interaction) scenario, i.e., to recognize when data obtained from a child is not based on that child's actual interactions with a given parent.

I make this distinction because the pendulum has swung so far to an extreme position in this area such that when it is suspected a parent is using alienating strategies he or she is automatically assumed not to be a candidate for primary caretaking parent (PCP).

This does not allow for the fact that many "alienators" are quite subtle and escape detection while their blatant ex-mates are not so subtle and get caught and labeled. Further, there are actually instances in which an "alienator" may still be the better choice for primary caretaker than the so-called "target" parent. Also, we should note that the existence of the pattern often depends on hearsay, and finally, some parents using alienating strategies should be doing just that.

Although the latter situation is rare, I recall a recent case where the mother was a blatant alienator and was seen as such. Critical decision makers automatically assumed she should not be made the PCP. It was not until the PORT revealed that the child's actual interactions with the "maligned" father were indeed terrible, that a more careful investigation was launched. The father turned out to have a well hidden criminal past which included violent behavior. This mother--rightfully in everyone's opinion--sought to protect her child from this man.

The PORT's ability to separate responses emanating from less conscious sources--responses more reflective of a child's whole-organism, gut-level interactions with a given parent--from the more conscious responses which are susceptible to loyalty conflicts, yields four separate NBOAI scenarios. Only one might be labeled the "classic" parent alienation syndrome i.e., a parent is trying, with success at a conscious level, to alienate a child from the other parent, and the child's actual interactions (as measured by the PORT "unconscious" indicators) are far more positive with that parent than would be assumed from what the child reveals consciously.

Approaching this area via the NBOAI conception also alerts the evaluator to being able to detect very subtle forms of alienation, as well as cases in which a "campaigning" child--a child who is obviously championing a certain parent--is not necessarily doing this because of anything he or she was told about the non-championed parent.

None of this is to say alienating strategies on the part of one (or both) parents--even when "justified" --should not be addressed therapeutically.

Ward and Campbell offer many no-nonsense interventions.

This is an important area, and we all should be concerned about it. Some mental health professionals are marketing themselves as "specialists" in the parent alienation syndrome. This has many implications, and not all of them seem good. The following, excellent article has some controversial points to make: reader input is urgently solicited.

FAMILY WARS
The Alienation of Children
Composite case from actual examples

The parents of Amy (age 10) and Kevin (age 7) are divorcing after 13 years of marriage. Their father, by temporary stipulation, has moved from the marital home. He is entitled to visit the children on alternating weekends and one evening during the week. Soon, the children refuse to go with him. At first, they do not want to leave Mom; they say they are afraid to go. When Dad comes to the house, Mom tells him that she will "not force the children to go." "Visitation is up to them," and she will "not interfere in their decision". The children refuse to talk with him on the phone. Mom calls him names when he phones and complains constantly about her financial situation, blaming him, all within hearing of the children.

Dad attempts to talk with the children about the situation, then to bribe them with movies, shopping trips, toys. They become sullen with him and resistant to coming. Anything, routine doctor visits or invitations from a friend, serve as excuses to avoid visits.

When asked, the children say "Dad is mean to us." When asked to give specific examples, their stories are not convincing. "He yells too loud when we make noise." "He made me climb all the way to the top of a mountain." "He gets mad at me about my homework." They say he has never hit them, but are afraid he will.

These children are in the process of becoming alienated from their father.

I. Definitions

Parental alienation is the creation of a singular relationship between a child and one parent, to the exclusion of the other parent. The fully alienated child is a child who does not wish to have any contact whatsoever with one parent and who expresses only negative feelings for that parent and only positive feelings for the other parent. This child has lost the range of feelings for both parents that is normal for a child.

We will call the parent who acts to create such a singular relationship between the child and himself the "alienating parent."¹ The parent who is excluded from the singular relationship is "the target parent." We note that alienation can occur both ways, each parent attempting to alienate the child from the other.

II. Harm to the Child

[T]he persistent quality of the conflict combined with its enduring nature seriously endangers the mental health of the parents and the psychological development of the children. Under the guise of fighting for the child, the parents may succeed in inflicting severe emotional suffering on the very person whose protection and well-being is the presumed rationale for the battle" (emphasis added).^{2,3}

It is psychologically harmful to children to be deprived of a healthy relationship with one parent.

"Visitation agreements must insure that the emotional bond of the child with both parents is protected. There is substantial research that indicates that children need contact with adults of both sexes for balanced development."⁴

With the exception of abuse, there is no good reason why a child should not want to spend some time with each of her parents, and, even with abuse, most children still want to maintain some relationship with the abusive parent. It is the job of the parents, the professionals and the courts to see that such contact is possible under safe circumstances.⁵

While alienating messages and behavior affect a child negatively and impact upon the child's growth and development, the impact on the child may not vary with the parent's intentions. The effect will be to place the child in a severe loyalty bind, a position wherein the child believes she must choose which of her two parents she will "love" more. To have to choose between parents is itself damaging to the child, and, if the end result is the exclusion of a parent from the child's life, the injury is irreparable.

There is a continuum of alienating parental behaviors which cause harm to children, and all positions on this continuum need be of concern to the professionals and the courts.

III. The Family Systems Approach

All families are made up of individuals who live together in relatively stable intimate groups with the ostensible purpose of supporting and caring for each other. Family members develop their own rules and boundaries, spoken and unspoken, about the ways that they will behave with each other, support and care for each other. Each family's rules and boundaries change over time to reflect modifications in membership, the evolving needs of its members and the realities of the outer world. Most changes in the family system are gradual, but some events force cataclysmic upheaval. Divorce is usually such an event.

Unless a separating family can change its own rules and boundaries without outside intervention, the divorce process itself may reach an impasse, the term applied when the divorce process itself becomes "stuck" and the family system fails to appropriately restructure itself. When there is an impasse, any move by anyone, family member, attorney, spouse, is met with a counter move resulting in no forward progress.

The impasse creates a system of its own, with its own membership, rules and boundaries. Although little recognized by professionals, membership in the divorce impasse system will include all members of the family living together and all professionals involved in "helping" the family get a divorce, i.e. the lawyers, mediators, therapists and even the judge. A divorce impasse can occur at three levels: an internal level (inside an individual); an interactional level (between two individuals); and/or an external level (within the larger social and familial system).⁶ An impasse at any one of the levels will affect the entire system, and how each individual member responds will affect all members, especially the child.

The children themselves are members in both the changing family system and in the developing broader divorce impasse system. As a member of the family system, a child is attached legally, emotionally and psychologically to each of his parents. As a member of a divorce impasse system, a child is often asked to ally himself with one parent or the other, a request which clearly places the child in a loyalty bind. Sometimes the request, either overtly or covertly, is that the child make the alliance exclusive. All members of the divorce impasse system, including the professionals, are affected by the loyalty struggles and may become polarized.

IV. Motivation for Alienation

An alienating parent most likely has strong underlying feelings and emotions left over from earlier unresolved emotional issues which have been resuscitated and compounded by the pain of the divorce. The individual, in attempting to ward off these powerful and intensely uncomfortable feelings, develops behavioral strategies that involve the children. One solution to the pain and anger is to sue for custody of the child and to endeavor to punish the other parent by seeking his or her exclusion. The internal world of an alienating parent can have complex origins which are beyond the scope of this article.

If the motivating factors are unconscious, the alienating parent may not feel and/or may not be aware of the feelings and emotions described above. Unaware parents may deny alienating behavior convincingly, but nonetheless, be involved in it.

Parents may also be aware of their angry or hopeless feelings but may consciously desire to protect the child. They tell their attorneys and the court of their conscious plans; however, despite the conscious desires, they may, unintentionally and unwittingly, engage in alienating behavior, driven by less conscious needs.

Frequently, the unconscious or unintentional alienating behavior results in the milder form of alienation of the child from the target parent. Nonetheless, it is important to recognize the concrete signs of alienating behavior in order to thwart its development.

Courts should not tolerate alienating behavior simply because the intention to alienate is denied.

Neither should the courts predicate a custody award on the hopes that the behavior witnessed and cited in court is merely a product of the acrimony generated by the litigation. Parties engaged in a high conflict divorce may show their worst behavior to all, but it is impossible to predict, as the courts so often wish they could do, whether this behavior will lessen after the final resolution of the case. In a case in which the Plaintiff father was awarded custody against the recommendation of the Guardian ad Litem, the Marital Master concluded:

"The (Father) has also demonstrated some behaviors which have been troublesome to the Master as well as the Guardian ad Litem. The (Father) has been manipulative in the presentation of this case, the Master concludes that he has inappropriately attempted to influence and pressure the children into giving negative information about their mother and he has demonstrated a lack of cooperation and flexibility in respecting the (Mother's) parental rights. It is the hope of the Master that these factors have been the result of this litigation and the hostility between the parties will resolve themselves and not be a factor following this decree." S.L. v. S.L., Superior Court, 1989.

Here, the master has been witness to a divorce impasse which may not resolve itself without intervention, and the parties'

statements of good intentions should not be relied upon to bring about a reversal of a behavioral trend already witnessed.

V. Recognition of Alienating Behaviors

A. The Continuum: Distinguishing between "Typical" Divorce and Alienation

In a "cooperative" divorce, both parents work together to restructure their own relationship and their family to allow the children as normal a relationship with each of them as is possible. This means cooperating as to finances, logistics and schedules as well as actively supporting the children's emotional relationships with the other parent and the extended families.

All parties to divorce experience a wide range of intense emotions, including rage, disappointment, hurt and fear. In "cooperative" divorces the parties consciously try not to engage in behavior they understand to be inflammatory to the other side.

However, an angry divorce is not necessarily an alienating one. Alienation occurs when the parties to divorce or custody litigation use their children to meet their own emotional needs, as vehicles to express or carry their intense emotions or as pawns to manipulate as a way of inflicting retribution on the other side. The focus in determining whether or not there is alienation in an angry divorce must be not on the degree of rage or loss expressed, but on behavioral willingness to involve the children.

Parental alienation occurs along a broad continuum, based on the level of internal distress of the alienating parent, the vulnerability of the child and the responses of the target parent as well as on the responses of the external system (family, attorneys, mental health professionals, the legal system). The range may be from children who experience significant discomfort at transition times (mild), through children who feel compelled to keep separate worlds and identities when with each parent (moderate), to children who refuse to have anything to do with the target parent and become obsessed with their hatred (severe).

There are alienating parents who are completely unaware of either their emotional state, the motivation to alienate, or the effects of their behavior (unconscious), while at the other end of the continuum, there are parents who absolutely intend to bind the child to themselves in an exclusive relationship and are explicit in their statements and behavior (overt).

B. MILD

Recognizing the mild form of alienating behavior is tricky: the alienating behavior is subtle, and the alienating parent prone to deny motivation and acts, and driven to verbally assert the opposite of what is true.

Although such statements are sincerely meant, the alienating parent's view of the other parent is compromised at this stage, as indicated by behavior. Not aware of the feelings that motivate the unintentional alienating behavior, the evaluator must look at the underlying messages that are given directly to the child. In this milder form there is less polarization of the external sources of the divorce impasse system (attorneys, courts). The communications to the child of the regard with which the other parent is held is the key to detecting alienating behavior.

Examples of mild forms of alienating behavior include:

1. Little regard for the importance of visitation/contact with the other parent: "You're welcome to visit with Mom; you make the choice; I won't force you."

- No encouragement of visits;
- No concern over missed visits;
- No interest in the child's activities or experiences during visitation (in a positive manner);

2. Lack of value regarding communication between visits:

- No encouragement of communication between visits;
- Little awareness of the distress a child may feel if a visit or phone call is missed.

3. Inability to tolerate the presence of the other parent even at events important to the child:

"I won't go to any soccer games if your mother is there."

4. Disregard for the importance of the relationship to the child:

- Displaying a willingness to apply for and accept a new job away from the other parent, without regard to the child's relationship with that parent.

At this stage alienation is most likely to become obvious during family system transition times, such as when children leave one home and go to another, when one parent remarries or has another child. The knowledge that a child needs the other parent may be present, but this rational belief may become overwhelmed by internal and interactional problems at this phase.

C. MODERATE

The alienating parent has some awareness of her emotional motivations (fear of loss, rage) and little sense of the value of the target parent. Sometimes, an alienating parent will understand the theoretical importance of the other parent in the life of her child, but believes that in her case, the other parent, due to character deficiencies, cannot be important to the child. Their statements and behaviors are subtle but damaging to the child.

1. Communications of dislike of visitation:

"You can visit with your Dad, but you know how I feel about it."

"How can you go to see your father when you know...I've been sick; Aunt B is here..."

"Visitation with your Dad is really up to you."

2. Refusal to hear anything about the other parent (especially if it is good):

"That's between you and your father... (regarding reports of visitation; plans for visitation);"

I don't want to hear about... (what you did with your father) (especially if it was fun);

3. Delights in hearing negative news about the other parent;

4. Refusal to speak directly with the other parent:

- When the target parent calls, gives the phone to the child, "It's him," in a disgusted tone of voice.

- Hangs up phone on the target parent;

- Silently hands the phone to the child when its the target parent calling.

5. Refusal to allow the target parent physically near:

- Target parent not allowed out of the car or even on the property, in the driveway, for pick-up and drop-off visitations;

6. Doing and undoing statements: Negative comments about the other parent made and then denied:

"There are things I could tell you about your Dad, but I'm not that kind of person."

"Your Dad is an alcoholic; oh, I shouldn't have said that."

7. Subtle accusations:

"Your Dad wasn't around a lot when you were little."

"Your Dad abandoned me."

8. Destruction of memorabilia of the target person.

At this stage alienation continues to occur more frequently during transitional times, but is present in other circumstances. With moderate forms of alienation, all three divorce impasse systems are involved. The alienating parent is facing an internal conflict; the alienating parent is interacting with the spouse in a manner designed to produce conflict; and the external forces, such as therapists, attorneys and the court, are involved in the polarization, at least to some degree.

D. OVERT

When the alienation is overt, the motivation to alienate (the intense hatred of the other) is blatant. The alienating parent is obsessed and sees the target as noxious to himself or herself, the children, and even the world. A history of the marriage is related which reflects nothing but the bad times. The target parent was never worthwhile as a spouse or a parent and is not worthwhile today. Such a parent shows little response to logic, and little ability to confront reality.

Many alienating parents at this stage entertain the overt belief that the target parent presents an actual danger of harm to the children. They present this belief as concrete knowledge that if the children spend time with the target parent they will be irreparably harmed in some manner or that they will be brainwashed by the target parent not to value/love the alienating parent.

1. Statements about the target parent are delusional or false:

"Your Mom doesn't pay support" when there is evidence to show payment.

"Your father doesn't love us" (or "you") when there is no evidence to that effect.

"Your mother drinks too much," "uses drugs," "smokes," etc. when there is no evidence to support these statements.,

"Your father went out and got the meanest lawyer in town;"

2. Inclusion of the children as victims of the target parent's bad behavior:

"Your Mom abandoned us";

"Your Dad doesn't love us (or you) anymore;"

3. Overt criticism of the target parent:

"Your Mom is a drug addict/alcoholic/violent person..."

"What's wrong with your Dad; he never/ always does..."

"Your mother endangers your health,"

"Your father doesn't take good care of you/ doesn't feed you/ take you to the doctor/ understand you during visits."

4. The children are required to keep secrets from the target parent:

"Don't tell your Mom where you've been/ who you've seen/ where you are going/ etc."

5. Threat of withdrawal of love:

"I won't love you if you... (see your Dad, etc.)"

"I'm the only one who really loves you."

6. Extreme lack of courtesy to the target parent.

At this stage of alienation, conscious motivation is always present, and the internal, interactional and external systems are fully engaged in supporting the alienation process.

E. SEVERE

By the severe stage, the alienating parent no longer needs to be active. In terms of the motivation, the alienating parent holds no value at all for the other parent (whether motivated by fears, emptiness, helplessness) and the hatred and disdain are completely overt. The alienating parent will do anything to keep the children away from the target parent.

At this stage the child is so enmeshed with the alienating parent that he or she agrees totally that the target parent is a villain and the scum of the earth. The child takes on the alienating parent's desires, emotions and hatreds and verbalizes them to all as his own. The child too sees the history of the target parent and family as all negative and is able to neither remember nor express any positive feeling for the target parent.

These, and overt cases of the previous paragraph, are the ones that as an attorney invade your private life and lead to emotional over-involvement, although any high conflict alienation case beginning in the moderate category can do so.

VI. Intervention in Alienation Systems

1. Prevention

A. Education

In the ideal cooperative divorce, there is little or no alienation occurring. Parents recognize the difference between their own needs and the needs of their children. They fully believe that their children have needed both parents throughout the marriage and will continue to need them after the divorce. Each parent values the role that the other parent can play in the lives of the children and the different interests and talents the other has to offer the children. There is no motivation for alienation because of the value attributed to the other parent.

This ideal is infrequently realized in real life because divorce is such an intense change of role, life stage and life style for almost

all who go through it. Participants need as much education, support and information as possible to help mitigate the harms that result from high conflict divorce.

Certain counties, court systems and other governmental entities⁷ are requiring all parents of children involved in a divorce to attend an educational program designed to help them understand the impact of the divorce process on themselves and their children and to recognize the value to children of having both parents involved. The parents are educated as to the typical stages in divorce and child development and the impact they can anticipate their divorce having on their children. The studies of the long term effects of divorce and the usual problems that occur are discussed. These programs are designed to be preventative of the kinds of problems that commonly arise when parents do not understand the psychological and emotional consequences their divorce has upon themselves and their children.

Other states require mandatory mediation prior to a court trial as a way of avoiding litigation. Mediation advocates believe that mediation is more successful than the courts at avoiding future litigation.⁸

While there have been no studies as to the effectiveness of these programs in preventing or ameliorating alienation, in one such program the participants themselves have reported great satisfaction with the program and have recommended that it be expanded.⁹

B. Attorneys

Attorneys and therapists are the front line professionals in most custody battles. They, too, have an obligation to educate their clients that divorce involves anger, rage, upset, distress, loyalty binds, and kids and parents who manipulate each other in crisis. The clients must be helped to understand the normality of these themes and to learn the strategies for controlling them and outgrowing them. Alternatives to intense battles must be explored.

It is the duty of the attorney to advocate for her client. Good representation will include assessing the family system clearly from the client's point of view, and to advocate for that client's interests zealously. However, we believe that such zealous advocacy must occur in the context of the client's long term interests as a member of a restructuring family system. Whatever the outcome of the immediate litigation, the client will remain in the family system with contact and relationship with all other members of the family system for the rest of his or her life. Long after the lawyers are gone, the client will live with the effects of the positions taken and the statements made in litigation. The client may later regret the vitriol and the permanency of the damage done by a high conflict divorce.

It is the attorney's job to help the client through the immediacy of the pain and the rage and to help the client see the long term view of involved family relations.

Attorneys must also be acutely cognizant of the divorce impasse system itself and the important part they play in it. Maligning the other spouse, requiring the client to have no further contact with the spouse, prohibiting any temporary agreements or a temporary separation can interfere with a real resolution of the conflict. Zealous advocacy is a poor excuse for actually damaging a client's long term familial relations.

Alienation cases present the greatest difficulty for attorneys. In the advocacy role, an attorney is bound to allow the client to define the goal of the representation and to advance that position zealously.¹⁰ An attorney is also bound not to bring or defend frivolous actions.¹¹ We believe that actions harmful to children could fall under that prohibition.¹²

If alienation is in progress, accepting at face value all derogatory comments about the opposing party will ill serve both the client and the attorney, as the client's judgment is emotionally tainted. It is incumbent on the attorney to sufficiently explore with the client his motivation and the reality basis of his beliefs before litigation is undertaken. Careful and thoughtful exploration with the client about the good times in the marriage and the positive parenting traits of the other side will give the attorney much information about both parties, and will tell the attorney just how balanced a view the client holds.

We believe that under no circumstances should an attorney encourage a client to gain information about the opposing party from a child. Nor should an attorney interview a child even if the child is unrepresented.¹³ The willingness of a client to directly involve a child in the litigation should be a red flag that the parent may well be using a child to further her own agenda, even if the child is apparently acquiescent.

It is crucial to note, however, that we are describing cases where alienation exists, and other forms of abuse, such as physical or sexual abuse, do not. If abuse is honestly suspected, safety of the spouse or children becomes paramount and full evaluation by a competent professional is a necessity.

C. Courts

Courts must recognize the initial seeds of alienation and seek information about family structure to examine the degree of risk in the family: Are the adults using or manipulating the children in furtherance of their own emotional needs? Are the children vulnerable to alienation?

All children can be enlisted into the battle, but, generally speaking, the children who are most vulnerable may be overly dependent, fearful and passive. These children may express guilt feelings about their parents' divorce, identify with or play the rescuer of the alienating parent, assume caretaking roles of a parent, and/or feel conditionally loved. The more vulnerable children pick up and resonate with the parental feelings. Generally, the children will have little insight into their situation.

The factors that identify families where alienation is less likely are: abundant positive contact between both parents and the children; sibling groups who all have good relations with both parents; good relations of the children with family and friends of both parents; free communication to the child by others of the good qualities of both parents; lack of defensiveness on the part of each parent as to the emotions, statements and criticisms of the other; ability of each parent to discuss schedules and parenting concerns with the other parent; ability of each parent to accommodate the schedules and desires of the other.

Many high conflict families view the court as determining not only custody and visitation, but also making judgments about the right and wrong, good and bad parenting. Court is seen as a place where one person is judged to be fit, and the other unfit. The court can help ameliorate this unfortunate scenario by making explicit the legal and pragmatic grounds for a decision. If appropriate, the court can declare neutrality on personal and moral issues that do not expose a child to harm. Compassionate communication that does not further the anger, loss, shame and humiliation in this public forum can be immensely healing.

2. Mild Alienation Cases

Once an alienation process has been identified, the court must intervene. Even at the mild or beginning stages there is much work to be done. There is usually a healthy psychological bond between each of the parents and the child and at least a cognitive recognition on the part of the alienating parent that an estrangement between the child and the target parent is not in the best interests of the child. The alienating parent is frequently willing to participate in a program to change the direction of the case, if given the information and the guidance necessary.

Often the alienation at this stage is motivated by fear that the impending divorce will cause the child to love the alienating parent less. The finalization of the divorce itself together with specific education and the therapy described below may ameliorate the situation.

At the mild stage, it is imperative that the family be engaged in a "family systems" therapy that is focused on changing the behavior of the parties around the child. The traditional individual therapies are not helpful as individual treatment tends to focus on only one side, therefore potentially increasing the alienation by advocacy for a client. If individual therapy is necessary for a child or a parent, it must take place with a therapist who understands the alienation process and who supports the value to a child of having a relationship with each parent. Family systems work may need to include the child at some or all sessions.

All therapists engaged with the family must understand family dynamics and parental alienation, have a systems approach and clearly understand that children need two parents. The therapists must be strong and forceful and able to utilize the force of the court through the Guardian ad Litem. The therapy must be directed at the resolution of the divorce impasse.

The Court ordered divorce impasse therapy must include all the adults directly involved in the custody of the child. This includes both parents and any live-in lovers or current spouses and any other adult who lives in the home of either the alienating parent or the target parent and any other adult who may be involved in the alienation. A court order may be necessary to require the warring adults to sit in the same room together, but we believe that they must actually face each other if possible, or, at a minimum, be involved with the same systems therapist if meeting together is not recommended.

The Court order must be forceful and explicit. The rights, responsibilities and duties of each parent must be spelled out explicitly. Attendance in therapy as required by the therapist must be court ordered. The custody and visitation schedule may also need to be explicit, with details of how, when and where pick-ups and drop-offs are to occur. All parties must understand that a court order cannot be modified unless approved by the court; if modifications can be made by the family with the agreement of the systems therapist, this must be made explicit in the order.

Confidentiality will always be an issue which should be addressed by the court, the parties, lawyers and the therapist. If the parties are able to agree to confidentiality, it should be written into the court order. If the therapy is confidential, it should be confidential to all, including the court and the guardian ad Litem. The ability of the parties to agree to confidentiality would be a major step to resolution as it indicates both motivation and trust of the system.

If the parties cannot agree to confidentiality, the court should do what it can to insulate the therapist from legal inquiry, with due regard for the parties constitutional rights.¹⁴ The court can order the attorneys not to speak with the therapist (except for the Guardian ad Litem) during the therapeutic process, order complete confidentiality for the therapist's working notes; delay all depositions until further court order, or otherwise limit the therapist's involvement in the litigation process.

There must be a mechanism for enforcement of the court order. The court should appoint a Guardian ad Litem who will have the authority, independent of further court order, to require a complete family system evaluation if the above treatment is not successful. The order at this stage should include the mechanism for the payment of both the Guardian ad Litem and the court ordered evaluation.

The order should also contemplate the need for rapid and complete intervention, should the parties fail to ameliorate the situation. We suggest that the court schedule a review hearing at the time it issues the therapy order, and allow only the Guardian ad Litem to cancel it.

We are hopeful that, in most cases, the court ordered expensive evaluation will be sufficient sanction to motivate the parents to genuinely participate in treatment, but the parties must be made to feel the strength of the court behind the court order. Sanctions for failure to comply must be explicit. We urge the court to spell out the next stage of intervention (described below) and include an explanation of what sanctions to expect at a future date, if necessary.

3. Moderate

Intervention for moderate alienation cannot be only the educational and counseling intervention described for mild alienation. Education cannot be successful because the alienation at this level is not a rational process and reason alone will not change irrational behavior. At this level the alienating parent's individual internal difficulties have become so intense that insight and judgment as to the target parent is impaired. Further, the alienating parent's interactions with and about the target parent are based not on observed behavior but on inner fears and serve to reaffirm the belief that the target parent is bad. Additionally, external forces (individual therapists, attorneys, extended family) have become polarized on behalf of one party and serve to perpetuate the alienation.

We believe that the family system must be thoroughly evaluated by a professional or a team of professionals competent in the "family systems" approach. The evaluation must be of the entire system, including all adults directly involved in the life of the child, as described above. The evaluation must be generated by a single source or team; multiple individual psychological evaluations will not be able to advise the court as to the interrelational issues that are affecting the functioning of the family.

The purpose of the evaluation is to 1.) identify the specific motivations and behaviors that are causing the divorce impasse or subsequent alienation; 2.) to assess whether or not individual therapy might be beneficial for any party to help resolve intrapsychic issues; and 3.) to develop a complete behavioral plan to intervene in the alienation process.

The behavioral assessment must be very specific as to the motivations for the impasse behaviors that are causing the alienation, and the changes necessary to alter the system. Once the behaviors and beliefs are identified, the evaluator can make recommendations as to specific behavioral measures to counter the alienation. The recommendations must be sufficiently detailed and specific to be quantifiable.

We wish to emphasize here that individual psychological evaluations and therapies, or "talking" group or family therapies are of minimal value in these situations, as they may only serve to perpetuate the alienation process. The goal of appropriate treatment is not only to gain understanding of the divorce impasse but also to behaviorally reduce or eliminate alienation within the system. In order to intervene in alienation, behavior and group dynamics must be modified.

We suggest the Individual Educational Plan (the IEP) as a model.¹⁵ The Recommendations must be as specific and goal oriented as the IEP, and compliance must be targeted in much the same manner.¹⁶ Compliance should be approximately 70% compliance the first two months; 80% the third or fourth month; 90% the fifth month and thereafter.

For example:

1. The child will see Target Parent X times per week without parental conflict at times of transition;
2. The child will telephone Target Parent X times per week and talk about positive things for a minute or two; (depending on the age of the child); (depending upon whether telephone calls to a hostile environment would be beneficial or not to the child);
3. During the visit, the Alienating Parent may call only "x" number of times (or may not call at all);

4. The child will send Target Parent a picture or painting in the mail once per week, with a positive note attached;
5. The child will bring home from visits a project done or a note to Alienating Parent about what was enjoyed during each visit.
6. The Target Parent will provide a photograph of himself to the child, and the Alienating Parent shall encourage the child to display it.

Essentially, what the evaluators must do is to understand the impasse, address it directly and compassionately. Clearly, this plan will work best if the internal and the interactional issues which created the divorce impasse are concurrently addressed and alleviated. At the same time the court must mandate the occurrence of specific behaviors that counteract the battle forces. The court must make the parents demonstrate that they can follow a plan whose ultimate goal is the mutuality of interest, even if they don't feel it. It is our position that the alienating parent must become the welcoming parent in deed if not in thought.

Finally, the plan must cover a specific and lengthy period of time during which behavioral requirements of the parties and the child are explicitly laid out. This will provide the parties sufficient predictability to calm the system down and to allow every one in it to get used to the idea that different relationships between the members are going to be established in a predictable manner. We suggest that the plan cover approximately six months with an automatic court review at that time.

Procedurally, we suggest that the Guardian ad Litem be authorized at the first stage of intervention, as noted above, to require the evaluation, and that the Guardian's request have the force of the court behind it. When the evaluation is commenced, the Guardian ad Litem simultaneously should request the Court to schedule a hearing to be held before the Court when the evaluation is complete. At the hearing, all parties could present to the court proposed remedial measures; the Guardian ad Litem would present the evaluator's report and recommendations which will likely include individual therapy to address the impasse and an IEP-like behavioral management program. The Court should then issue a detailed, quantifiable, specific order with sanctions enumerated, as to the behavioral changes necessary to ameliorate the alienation and order the parties into therapy, if recommended.

There will be no confidentiality by the time a family is in this stage of alienation and need for intervention. The court needs to be able to monitor the progress of the family through the behavior management therapy. The behavior management therapist will need to be able to communicate with any individual therapists involved with family members so that there is a full and complete exchange of information and no family secrets.

Creative sanctions must stand behind the court order as compliance at this stage will be motivated only by fear. The ultimate sanction is a change of custody, but there are many others we could suggest. The legal system has traditionally used fines and loss of liberty as punishment for failure to comply with court orders. Certainly, these are sanctions that could be used in these cases, but they may harm or confuse the children as much as the contemnor. Obviously, an award of attorney's fees, the threat of attorney's fees, the threat of weekend jail time may be a useful sanction. Threats of transferring or assigning responsibility for the Guardian ad Litem's fees, the cost of the evaluation, the costs of the child's therapy or even therapy for the other parent can all be used to motivate compliance in this early stage of intervention, subject always to the best interests of the child.

We also suggest that the court could shift both time (expand visitation or award cherished holidays and birthdays to the complying parent) and function (assign areas of traditionally joint parental authority such as medical care, education) in favor of the target parent, both as appropriate sanctions, and as possible preparation for the ultimate sanction, a change in custody.

The careful monitoring of such a detailed court order is an essential piece of this intervention, and we suggest that there be a monitoring team to do it. The Guardian ad Litem and a therapist, most likely the evaluator or the original post-divorce counsellor, should work together monitoring compliance. Such monitoring perforce will be largely through reports of the principles involved, the parents and the child, but can also be done by teachers, individual therapists, friends, etc. through reports to the Guardian ad Litem. For instance, teachers can be asked to report on the emotional condition of a child before and after visits and to report on any information the child offers in school. A child can be asked where he keeps the photograph of the Target Parent (as an indicator of the degree of comfort the child has in the display in the allegedly hostile environment).

A team is necessary to lessen the danger of the professionals becoming caught into the polarization in the family system. In extreme cases the monitoring team may even want to have a third consultant monitor available to them to oversee the case as a more distant figure, not caught up in the everyday details these kinds of cases chronically present. A consultant monitor could stay aloof of the various warring factions.

If the parties fail to comply with the court orders there needs to be swift access to the courts and a second look at the custody situation.

4. The Parent Evaluation

If the above described interventions fail and the child remains virtually without relationship to the target parent a different level of intervention is warranted. If the alienating behavior continues despite the education, the post divorce counseling, impasse resolution therapy, and the specific behavior management intervention, one can conclude as a matter of established fact that the alienating parent does not have the capacity to foster a relationship with the other parent.

There is a considerable body of research which specifically examines the effects on children of single parent homes. A full review of this literature is beyond the scope of this paper, but, in general, the evidence is overwhelming that in father-absent homes, boys have lower self esteem, are more likely to be rejected by peers and may experience deficits in cognitive functioning. Girls may be less affected than boys in father-absent homes, but the research does show negative effects on girls' social and cognitive development.¹⁷

There is an additional body of research on reactions of children to high conflict divorce.¹⁸ Children who experience high degrees of conflict between parents during divorce show more emotional difficulty than those whose parents are able to better resolve their difficulties. Children whose parents are in conflict "are more likely to feel caught, and children who feel caught are more likely to experience depression, anxiety, and, to a lesser degree, participate in deviant behavior."¹⁹

The deliberate alienation by one parent of the other, unmodified by the numerous interventions described above, is psychologically harmful to the child.

"It is important...to appreciate that a parent who inculcates a parental alienation syndrome in a child is indeed perpetrating a form of emotional abuse in that such programming may not only produce lifelong alienation from a loving parent, but lifelong psychiatric disturbance in the child."²⁰

A change of custody must be contemplated under the best interests standard as the Perrault²¹ standard of a "strong possibility of harm" has been met.

The court must determine what custody location would be the most beneficial to the child, although in many of these cases the courts actually have to decide which placement is the least damaging to the child. A comparative determination of the custodial capacity of each parent must be done. The court or the parties may well have sufficient information at this point to litigate the issue of the best interests of the child. If not, parenting evaluations become crucial.

Knowing that the alienating parent does not have the ability to foster a relationship between the child and the target parent, the issue before the court will be, does the target parent offer the child sufficient parenting capacity to outweigh that very serious harm. We believe that, because of the very nature of the harm to the child from the lack of a relationship with the target parent, the court must determine whether the target parent has adequate parenting capacity.²²

If the target parent shows a parenting ability that is adequate as defined in the research and fits the needs of the child and there is a reasonable likelihood that the target parent will foster the relationship of the child with the alienating parent, the court should seriously consider modifying custody, unless the child is so enmeshed with the alienating parent that a change in custody would be permanently harmful to the child. If the target parent is not adequate, it becomes incumbent on the court to see if there are other family members or foster care available to take the child, someone to help the child create and maintain a relationship with each of his parents.

5. Severe: The Fully Enmeshed Child

If the alienation is allowed to progress and the child has few resources with which to resist the influence of the alienating parent, the child may become fully "enmeshed" with the alienating parent. It is estimated that very few children suffer this harm (between 1% and 5% of alienation cases²³) but there are those situations where it is impossible to encourage or even force a child to be with the target parent. These children have only extremely hostile feelings for the target parent, and no amount of evidence disproving their stated reasons for their hatred will serve to dissuade them. Enmeshed children have incorporated the alienating parent's hatreds, emotions and desires with regard to the target parent, such that it is often difficult to discern who is expressing them.

In some of these cases, the enmeshment is so complete that it would cause the child to suffer an emotional breakdown of devastating proportions if custody were awarded to the hated target parent. In these cases, the child's sense of self is totally dependent on the relationship of the alienating parent, and a loss of that relationship would mean destruction of the self. Certainly, attempts to switch custody would be fought against and undermined by the child: tactics would include runaways; reports by the child of physical/sexual abuse by the hated parent; reports by the child of self destructive behaviors such as drug abuse, suicide attempts; refusal to participate in school; etc.

In these rare cases, the child must stay with the alienating parent, as it is not proper to use a child to punish a parent for

misbehavior.²⁴ For whatever solace it is, the target parent must be assured that at some point children do seek out the other parent, and the relationship is not lost forever.

When there is no relationship allowed or allowable between the target parent and the enmeshed child, some courts have suspended a target parent's child support or allowed the target parent to escrow child support so that the target parent does not have to provide financial assistance to the household that hates him so profoundly. However, even this sanction must be used cautiously as the detriment may be experienced by the child, not the alienating parent.

VII. Weapons

"Weapons" are the false allegations by the alienating parent of behavior on the part of the target parent inimicable to the welfare of the child. The most commonly used weapons are false allegations of:

- threats of or actual domestic violence;
- sexual abuse of the child;
- physical abuse of the child;
- emotional abuse of the child;
- mental illness on the part of the target parent;
- alcoholism/drug abuse/homosexuality on the part of the target parent;

or threats of:

- moving or flight by the alienating parent.

Even when such an allegation is made in the context of high conflict litigation, it must be taken very seriously on its face and fully investigated to determine its validity. Each allegation accuses the target parent of behavior harmful to the child. Safety of the child is paramount. Neither the courts, the lawyers, the therapists or, perhaps, the parents, want to risk the welfare of the child when there is a possibility that the accusations might be true.

By their very nature, the allegations shift the emphasis of investigation onto the accused, the target parent. Several of the accusations are of very private behavior, in the home only, which behaviors are difficult to prove and/or disprove.

Most domestic violence remains invisible despite the increase in awareness of the problem. Under New Hampshire procedures outlined in NH RSA 173-B, a complaint of domestic violence taken to court together with a request for exclusive custody can give the complainant a considerable advantage in the legal system.

Custody can be gained in an ex-parte proceeding. A sworn claim of violence or the threat of violence is all that is needed. Extrinsic proof of danger or harm is rarely requested, and Judges make no inquiry whatsoever into the nature of prevailing custodial arrangements. In most cases, the procedures are appropriate and the protection given critical to the life and safety of domestic violence victims and their children. In rare cases, the procedures afforded to domestic violence victims are manipulated to gain advantage in custody cases without being grounded in real fear of physical violence.

Attorneys are bound by their own ethical rules not to knowingly mislead a tribunal.²⁵ It is highly questionable practice to refer clients who have not suffered domestic violence or the serious threat of it to court for the quick relief afforded such victims under NH RSA 173-B, although the New Hampshire District Court Judges report an increasing number of such custody cases.²⁶ Advising a client to gain a tactical advantage by using the emergency procedures afforded under NH RSA 173-B may violate the Code of Professional Conduct even if the attorney is not involved in the presentation of the case to the court.

Allegations of abuse of a child (physical and/or sexual) may be fabricated but may also be absolutely accurate; in all instances, but especially in the context of a custody battle, such allegations need to be dealt with immediately by a competent professional who fully understands: 1.) sexual and/or physical abuse of children; 2.) family systems; 3.) divorce and custody litigation and the impact of lawyers and the legal system.

Sexuality triggers intense feelings in all listeners, and fear and panic may, at times, obscure reason. Some litigants have learned to use to their advantage the irrationality that can attend allegations of sexual abuse. We caution all involved: get professional intervention immediately with a coordinated, systemic evaluation of both the allegations of sexual abuse and the family system that has produced the allegation.

Allegations of physical abuse are not used often in the context of custody litigation, perhaps because physical abuse is usually easier to detect than sexual abuse, making it easier to prove or disprove. When the allegations are made and sufficiently established to cause concern in the Superior Court, the court or the parties involved must refer the case to the Division for

Children and Youth Services under NH RSA 169-C.

If it is unclear that there is in fact abuse (sexual or physical), then the allegations may have been produced by the intensity of feelings about the divorce, the fear of abuse and a misreading of a particular situation. However, the failure to disprove the allegations will paralyze the system to the advantage of the alienating parent because the emphasis of the Court and the professionals must be on the protection and safety of the child. Unless disproved, these suspicious allegations cast a pall of potential harm to the child that no one person, institution or agency will have courage enough to ignore.

We believe that it is important to establish a baseline of facts upon which all persons involved in the divorce impasse system, family and professionals alike, can rely for future decisions regarding visitation and custody. Because of the emotionally charged atmosphere sexual and physical abuse charges generate, we believe that no one person should be responsible for establishing those facts. Therefore, we suggest that advisory juries be empaneled to aid the judge in his findings regarding the allegations of abuse. NH RSA 519:23; NH RSA 491:16.27 Unless this is done and reliable facts are established in these cases, an accused will always be treated as guilty unless proven innocent with regards to contact with the children.

Accusations of alcoholism, mental illness or homosexuality also place a burden on the target parent to prove fitness to be with the child, but these factors are less potent in most custody litigation today than they used to be. It is easier to prove or disprove alcohol or drug abuse or mental illness as the behavior is not necessarily private. These accusations also do not directly implicate parenting capacity in the same way allegations of physical or sexual violence do, and the courts are routinely requiring that litigants prove a nexus between the alleged behavior and harm to the child.

Another weapon is the threat of moving, or the actual flight of the alienating parent. The court must immediately look to the motive, spoken or unspoken, for the move; if the motivation is to keep the target parent away, this is a clear red flag that the alienating parent will stop at nothing to achieve an exclusive relationship with the child.

No matter when a "weapon" shows up in the course of the litigation, the fact of its allegation must lead directly to a full systems evaluation by a qualified, competent professional. It serves as an indication that the alienating parent knows no bounds and that education, information and behavior management will be insufficient interventions. The courts must look to the long term best interests of the child in terms of custody because the alienation process will continue. The use of a weapon should catalyze the system to the evaluation of the custodial capacities of each parent. An expert must look at the entire system, assess the truth and relevance of the allegations, the motivation for the allegations, assess the safety and welfare of the child and make recommendations as to the best placement and visitation arrangements for the child.

Conclusion

A partnership of judges, attorneys, and mental health professionals is critical in the resolution of high conflict alienation cases. A judge has the power to order changes but is not readily available. Lawyers are more available, but do not necessarily have proper understandings. As advocates, they can easily become part of a divorce impasse system, aggravating an already inflamed system. Mental health professionals must have a systems understanding and usually are available, but do not have the power of the court, nor the legal understandings of the attorney. A partnership is essential.

Attorneys must help clients discern long term interests regarding children, the meanings behind a custody battle (hurt, revenge, fears) and ensuing alienation. Attorneys must offer education about the importance of co-parenting and moving beyond the battleground. Attorneys must treat with caution and trepidation a client who sees a divorcing spouse as all bad and must avoid joining with the client in further escalating this belief. Attorneys must refer to mental health

professionals trained in family systems, those who need someone who will work for the best interest of the whole family. Attorneys must recognize when they have been enlisted as active parties in the polarization alienation conflict, and seek consultation so as not to further escalate the process.

Courts must act decisively and explicitly in cases of high conflict divorce and alienation. Orders must be pragmatic and the grounds for decisions must be explained in terms that make it less likely that one party can claim a moral victory and the other feel shame of defeat. Courts must use their knowledge and power to understand the family system, to recognize high conflict alienation cases, and to make appropriate, timely and specific referrals and recommendations. By recognizing alienation in its early forms, prevention of future harm to the child and family may well be possible. Intervention, at any point along the continuum of harm is crucial to prevent further harm.

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ENDNOTES

1. Most of the research to date has shown that the mother is significantly more likely to be the alienating parent and the father the target parent. However, we note that there is a fair amount of controversy in the field regarding the conclusion that more mothers alienate than fathers, and wish to emphasize that in many cases we personally have seen, it is the father who alienates and the mother who is the target.
2. See, Lamb, M.E.(ed.) In Non-Traditional Families, "Effects of Divorce on Parents & Children" by Hetherington, E.M.; Cox, M.; Cox, R. (1982). See also, Wallerstein, J. & Kelly, J.S., *Surviving the Breakup: How children and Parents Cope with Divorce*, (1980); J. Wallerstein & S. Blakeslee, *Second Chances: Men, Women and Children a Decade after Divorce: Who Wins, Loses and Why* (1989)
3. Johnston, J.R. & Campbell, L.E.G., *Impasses of Divorce "Forward"* by J. Wallerstein, p.ix (1988)
4. Hodges, William F. *Interventions for Children of Divorce at 151* (1986).
5. Gardner, Richard, *The Parental Alienation Syndrome* (1992).
6. Johnston, *Impasses of Divorce* see Endnote 2.
7. "Families First" is a program currently mandated in several cities/counties in Georgia, Florida, Indiana, Texas, Illinois, Michigan, and Louisiana, among other states.
8. California (The Family Act, Sec. 4607, The Civil Code), Maine (19 Maine Revised Statutes 214.4), North Carolina (7A North Carolina Revised Statutes 494) and Wisconsin (767.001 Wisconsin Revised Statutes) require mediation for custody cases.
9. Zirps, Fotena A., Ph.D. *Children Cope with Divorce -- Follow-up Study*, Cobb County, Families First, Atlanta, Georgia, (1992).
10. Code of Professional Conduct Rule 2.1.
11. Code of Professional Conduct Rule 3.1.
12. American Academy of Matrimonial Lawyers, Standards of Conduct Rule 2.25 An attorney should not contest child custody or visitation for either financial leverage or vindictiveness. Comment: ..."Proper consideration of the welfare of the children requires that they not be used as pawns in the adversary process. If despite the attorney's advice the client persists, the attorney should seek to withdraw."
- Rule 2.27 An attorney should refuse to assist in vindictive conduct toward a spouse or third party and should not do anything to increase the emotional level of the dispute. Comment: ..."If...the client...asks the attorney to engage in conduct the attorney believes to be imprudent or repugnant, the attorney should attempt to convince the client to work toward family harmony or in the interests of the children. Conduct in the interests of the children or the family will almost always be in the client's long term interests."
13. American Academy of Matrimonial Lawyers, Standards of Conduct Rule 2.24 When issues in a representation affect the welfare of a child, an attorney should not initiate communication with the child, except in the presence of the child's lawyer or guardian ad litem. with court permission, or as necessary to verify facts in motions and pleadings.
14. *Ross v. Gadwah*, 131 N.H. 391 (1988).
15. *Individuals with Disabilities Education Act*, 20 U.S.C. S 1400 et seq.
16. See N.H. Standards for the Education of Handicap Students, Chapt. Ed. S 1109 (1988)
17. Hodges, see Endnote #4. There is not enough research on mother absence to reach conclusions at this point in time as the frequency of mother absence is so low that obtaining generalizable samples is virtually impossible.
18. Wallerstein, *Second Chances*, see Endnote #2.
19. Buchanan, C. & Maccoby, E., "Variation in Adjustment to Divorce: The role of feeling caught between Parents" April 1991, Paper presented at the Biennial Meeting for the Society for Research in Child Development, Seattle Washington, April 18-20, 1991.
20. Gardner, *The Parent Alienation Syndrome* at viii.
21. *Perreault v. Cook*, 114 N.H. 440 (1974); *Howard v. Howard*, 124 N.H. 267 (1983).
22. There is substantial research on adequate or "good-enough" parenting: Hodges, see Endnote #3; Shutz, B.M., Dixon, E.B., Lindenbergen, J.C., Ruther, N.J., *Solomon's Sword* (1989)
23. Clawar & Rivlin, Page 142.
24. *Webb v. Knudson*, 133 NH 665, 673 (1990). "Children are not chargeable with the misconduct of their parents and should not be uprooted from their home in order to discipline a recalcitrant parent." See also, *Houde v. Beckmeyer*, 116 NH 719 (1976).
25. Code of Professional Conduct Rule 3.3 A lawyer shall not knowingly mislead the court or use illegal or false evidence.
26. *Domestic Violence Training for District Court Judges*, January, 1990, personal conversation.
27. This suggestion has been made by Judge Linda Dalianis of the New Hampshire Superior Court. See, *Bonser v. Courtney*, 124 N.H. 796 (1984) Only a Judge, not a Marital Master, could empanel an advisory jury.

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