

## Understanding and Evaluating Alienation in High-Conflict Custody Cases\*

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Since 1980, when Wallerstein and Kelly first wrote about children who refused visitation with a parent, there has been considerable controversy about this topic.<sup>1</sup> Much of the controversy exploded after Gardner coined the phrase “Parental Alienation Syndrome” (PAS) in 1985.<sup>2</sup> Since that time, scholars have debated whether or not there is a syndrome related to parental alienation. Some have argued that there is no syndrome and that this is mostly a creation of Gardner’s with no validity.<sup>3</sup> Others have argued that PAS does exist and that it is damaging to children.<sup>4</sup> Some have argued that the primary cause of children refusing to visit the other parent is found in the behavior of the alienating parent while others have argued that there are multiple causes that lead to children refusing contact with one parent. There is also significant controversy about how to deal with alienation, with some arguing for a change in custody when alienation dynamics exist and others arguing for more caution.

This article will examine these issues.

For purposes of this article, parental alienation is defined as a child’s *unreasonable* rejection of one parent due to the influence of the other parent combined with the child’s own contributions. Gardner’s early definition hypothesized that the primary cause of the child becoming alienated is the behavior of the aligned parent. His model suggested that, if we have a child who is refusing visitation and a parent who is supporting that refusal, then we have parental alienation operating. This linear model, in which there is a single cause and an obvious effect, was a key component in his understanding of alienation. In contrast, a clinical model recognizes that multiple causes might contribute to an effect. In this regard, it suggests that multiple causes contribute to a child becoming alienated. Since it is hypothesized that multiple causes contribute to alienation, Kelly and Johnston suggested the term “the alienated child” as a way of defining that children can

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<sup>1</sup> Judith Wallerstein and Joan Kelly, *SURVIVING THE BREAKUP* (1980)

<sup>2</sup> Richard Gardner, *THE PARENTAL ALIENATION SYNDROME: A GUIDE FOR MENTAL HEALTH & LEGAL PROFESSIONAL* (1992).

<sup>3</sup> See e.g., Cheri Wood, *The Parental Alienation Syndrome: A Dangerous Aura of Reliability*, LOYOLA OF LOS ANGELES LAW REVIEW, 1994, 1367-1415; Danielle Isman, *Gardner’s Witch-Hunt*, UC DAVIS JOURNAL OF JUVENILE LAW & POLICY, 1996; and Carol Bruch, *Parental Alienation Syndrome and Parental Alienation: Getting it Wrong in Child Custody Cases*, 35 FAMILY LAW QUARTERLY.

<sup>4</sup> See e.g., Mary Lund, *A Therapist’s View of Parental Alienation Syndrome*, FAMILY AND CONCILIATION COURTS REVIEW, 1995, 308-316; Deirdre Rand, *the Spectrum of Parental Alienation Syndrome* (Parts I and II), AMERICAN JOURNAL OF FORENSIC PSYCHOLOGY, 1997; and Richard Warshak, *Parental Alienation Syndrome in Court*. Author, 1999.

become alienated not solely because of the behaviors of the parent.<sup>5</sup> By bringing the focus back to the child, as was done when Wallerstein and Kelly first discussed this phenomenon, their model suggests that the child's behavior and the multiple contributions to this behavior is more important than the single cause, which is the behavior and emotions of the aligned parent.

### **Contributions to the Child's Alienated Response**

Kelly and Johnston hypothesized that the child's response of alienation occurs as a result of many factors, each of which contributes a portion of the force that results in the child's response. These can include the following:

- The personality of the aligned parent and that parent's negative beliefs and behaviors that reinforce the child's aligned response. This is consistent with the view of Gardner who hypothesized that, when there is a hostile parent, the child is likely to respond in an alienated fashion.
- The personality and responses of the rejected parent, both historically in the relationship as well as in response to the child's initial alienation.
- Because alienation occurs within the context of the divorce, a more conflicted divorce and intense litigation can also contribute to the child's response, especially when the child is exposed to the litigation by one or both parents.
- Marital history, especially when there has been intense marital conflict, or when there are intense emotions around the separation (such as shame or humiliation).
- The myriad of aligned professionals and/or extended family and friends who contribute their own pressures on the parents and/or the child to resist contact with one parent.
- The siblings can also be a factor, especially when an older sibling refuses contact with a parent, as this can contribute to a younger sibling becoming afraid or resistant.
- Finally, a critical component to whether or not the child will become alienated is found in the child's age, cognitive capacity, temperament, and vulnerability. It is hypothesized that children under age 7 are less likely to become alienated because they are less able to "hold onto" the resistance when they are with the otherwise-rejected parent but that older children can easily be common alienated and will often take a strong position primarily because of these factors.

In addition to this multiple causation, Kelly and Johnston hypothesized that there is a continuum in the relationship between children and each parent that may typically range from an equal attachment with each parent, through an affinity or an alignment between a child and one parent and an estrangement or alienation from one parent. When a child previously had significant

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<sup>5</sup> Joan Kelly & Janet Johnston. "The alienated child: A reformulation of parental alienation syndrome." *Family Court Review*, 39, 3, 2001.

problems in a relationship with one parent (for example as a result of child abuse or family dynamics which include domestic violence) a child who refuses contact would be considered estranged but not alienated. Such estrangement is usually seen as a healthy response to an untenable situation.

In contrast, it is considered alienation when a child had a healthy attachment with each parent and now is rejecting one parent as a result of some combination of these forces. Thus, any consideration or evaluation of family dynamics to understand a child's rejection of a parent must consider the family history and the history of the child's relationship with each parent. Finally, regardless of one's conceptualization of this phenomenon, most scholars view this type of alienation as being pathological.

### **Parent Contributions to the Development of Alienation**

Divorce research suggests that it is common, especially in the early stages of divorce, for both parents to engaging in inappropriate behavior, especially behavior in which parents are hostile toward and critical of each other before, during, and after separation. This increases the likelihood that children will hear both subtle and overt derogatory messages about one parent from either or both parents. As I conceptualize the issues, it appears that the parents who are most likely to either consciously or unconsciously alienate their child against the other parent are most likely to be angry, emotionally fragile, and potentially dependent on their children for self-esteem. Many of these parents act with poor impulse control and have rather rigid black-white type beliefs. While Gardner hypothesized that some of these parents are psychotic, it is my opinion that the parent who has poor boundaries with one's child and who tends to be rather inflexible in relationships and exhibit either rigid thinking or emotional fragileness is the most likely contributor to the child's alienation. Especially in the first year of divorce, but for some parents lasting much longer, it can be very difficult for parents to forgive the other for perceived hurts or for being rejected by the other parent in a divorce. This is potentially more likely when one parent is rejected in favor of another partner. Some parents love their children conditionally, so such children get the message that if they love the other parent, this parent will not love them. This sets up, within the child, the untenable position of having to choose between one's parents.

As mentioned above, it is not only the personality and behaviors of the aligned parent which contributes to the child's rejection, but also the behaviors and personality of the rejected parent. In this author's experience, it is not uncommon for rejected the parents to have had a limited and/or tenuous relationship with one's child prior to separation and claim alienation when the child's reaction is more consistent with the alignment noted above. In the same vein, it is not uncommon for the rejected parent to have limited awareness of the ways in which his/her behavior has contributed to the child's rejection. In addition, this author has seen numerous examples in which a relatively passive parent, in combination with a somewhat hostile and rejecting parent, will allow that angry parent to make the rules and create an environment in which children will resist contact with the rejected parent. When this process continues for some time, it increases the risk that the child will become more alienated. Thus, the rejected parent's passivity becomes a contributor to this dynamic.

Clearly, more research is needed to understand the extent to which both parents contribute to the child's alienation and a comprehensive evaluation with both parents is indicated to understand his/her contributions to the child's alienation. I will provide more information on the evaluation of alienation below.

### **Child Contributions to the Development of Alienation**

Much has been written about children's reactions to conflict in divorce.<sup>6</sup> Again, as I conceptualize the issues, it's clear that some children can be overwhelmed by the fact of the conflict and many experience significant regression. One form of this regression can be splitting, in which children tend to view one parent as all good and the other parent as all bad. For some children, taking sides in the war reduces their anxiety, even if it sets up unhealthy relationships with one parent.

Another contribution can be the anxious attachment or hostile-dependent relationship between the child and one parent. Like the school phobic child who refuses to attend school due to anxiety in the maternal bond, these children refuse to visit with one parent because of anxiety in the relationship with the aligned parent.<sup>7</sup> For many of these children, there is an enmeshed quality to the relationship, and the child cannot have his/her own independent thoughts and feelings.

Another source of the child's potential contribution lies in a need for some children to emotionally take care of a parent. For these children, they fear how the aligned parent might react if they visit the other parent, and they cling to the aligned parent to protect him/her.

Clearly, more research is needed to understand the extent to which children's emotions contribute to the child's alienation.

### **Typical Alienated Behaviors in Children**

While attitudes are important in understanding a child's alienation, the child's behaviors are critical. In children who are alienated we tend to see some or all of the following behaviors:

- A near or complete rejection of one parent in favor of the other. While there may be some ambivalence in this, as the alienation becomes more extreme, the child becomes more absolute in his/her refusal to see the other parent.
- A fusion of thinking in which the child and the aligned parent think alike. They might even use the terms "us" or "we" to define attitudes and beliefs, rather than "I".

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<sup>6</sup> See e.g., Janet Johnston & Vivian Roseby, *IN THE NAME OF THE CHILD*, 1997 and Philip Stahl, *Alienation and Alignment of Children* in *COMPLEX ISSUES IN CHILD CUSTODY EVALUATIONS*, 1999.

<sup>7</sup> See the literature on school phobia, mostly from the 1950's and 1960's.

- Superficial and trumped-up or exaggerated complaints about the rejected parent with little or no substance.
- Inconsistent and contradictory statements and behaviors. For example, at times, especially when in the presence of the aligned parent, the child may be vehement in his/her rejection of the other parent. At other times, especially when in the presence of the rejected parent, the child may be ambivalent and act in friendly and positive ways.
- A strong tendency to become over-involved in the adult issues of the divorce. At times, this is parent driven, such as when parents tell their child about issues like child support, who has caused the divorce, etc. At other times, this is child driven, as some children go out of their way to look at court papers, listen in on phone conversations between adults, etc.
- When confronted about why they are rejecting a parent, many such children are vague in their reasons and some just say that the parent is “mean”. They tend to refuse to answer specific questions about the history of the relationship and stay focused on the exaggerated complaints.
- When interviewed, many alienated children will use the same phrases or expressions as the aligned parent. This is consistent with the merged thinking often found between such parents and children.
- Many alienated children are used as spies by the aligned parent. This author has seen children who have been told to search a parent’s computer for information on bank accounts. In the same vein, alienated children are often put in the role of keeping secrets from one parent. This contributes to the child’s anxiety and need to choose between their parents.
- As indicated above, many of these children (and their aligned parent) see the world in rigid and all or nothing ways. Thus, one parent becomes all good and the other becomes all bad.

While there are other examples in the literature, these are the most common ways that an alienated child will behave.

### **Emotional Impact of Alienation on Children**

There has been a great deal written about the impact of alienation on children. It is beyond the scope of this article to go into depth about this.<sup>8</sup> However, it’s important to briefly summarize these negative effects. When children are caught up in the midst of this conflict and become alienated, the emotional response can be devastating to the child’s development. The degree of damage to the child’s psyche will vary depending on the intensity of the alienation and the age and vulnerability of the child. However, the impact is never benign because of the fact of the child’s distortions and confusions. It is this author’s view that the distortion of history and the

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<sup>8</sup> For more information, see e.g., Johnston & Roseby, *supra* note 6; Janet Johnston, Marjorie Walters & Steven Friedlander, *Therapeutic work with alienated children and their families*. FAMILY COURT REVIEW, 39 (3); and Kelly & Johnston, *supra* note 5.

distortion of the relationship with one parent is potentially the most damaging effect on children. In addition to this, alienated children are at risk of developing disturbances in many of their relationships. They often become manipulative and feel overly powerful. They may be resistant to authority and act out at school. Some of these children may extort the aligned parent because of this manipulation. As they get older, there is a strong likelihood that they will develop a disturbance in their growing identity. None of this can be healthy for the child who is caught up in the conflict between his/her parents and who becomes alienated from one parent.

One of the most intriguing questions evaluators, judges, and attorneys need to consider is why some children are resistant to the pressures of such alienation and keep positive contact with both parents and why some children are more vulnerable to these pressures and reject one parent. In this author's experience, the children who are most resistant to becoming alienated:

- Accept the reality of the otherwise rejected parent;
- Have enough contact with the other parent;
- May have older sibling or someone else that the child respects who isn't so alienated;
- Are not too vulnerable emotionally. They likely have a healthy temperament;
- Have a healthy self-esteem which makes them less susceptible to alienation;
- Have someone who has taken a strong role in countering the alienated position and undermine the process of alienation. (E.g. "Judge [or parent coordinator] says I have to go").
- Have an otherwise-rejected parent who is reasonably self-protective. Such a parent can openly discuss relevant issues with the child in a way that is sensitive to the child and the other parent's feelings. Such a parent doesn't counter-attack. Oftentimes, these parents need help and coaching on how act in a self-protective manner without fueling the child's conflicts.

In contrast, the children who are most susceptible to the forces which result in alienation:

- May be passive, dependent, have a difficult temperament, or low self-esteem;
- May experience a great deal of secondary gain from their alienated symptoms;
- Are likely to have a tenuous, anxious, or hostile-dependent and fragile relationship with the alienating parent;
- Are likely to have been conditionally loved;
- May have other symptoms, exacerbating their emotions, including, but not limited to sleep or eating disorders, drug abuse, depression, psychosomatic problems, confusion and school problems;
- May be self-centered, have exceptionally strong feelings of entitlement and are used to

demanding their way.

Again, as with the other issues, more research will be needed to understand the role that children's temperament and these other features affect the likelihood that a particular child will become alienated.

### **Dynamics of the Larger System**

In addition to the parent and child dynamics that contribute to the development of alienation, it's been postulated that other forces may be contributors to a child's alienation, as well. Friends and relatives of the family often join in the conflict in what Janet Johnston has called "tribal warfare". They may help to stir up the conflict and contribute to the extent that a child is embroiled in the middle of it. While therapists are often helpful in reducing alienation symptoms, there are times that therapists take a unitary view of the problems and reinforce the notion that one parent is good and the other is bad. In a recent article, Greenberg, Gould, Gould-Saltman, and Stahl suggested that the courts and observers consider the extent to which a therapist is part of the problem in conflicted family and juvenile court cases.<sup>9</sup> A third possible contributor outside of the family is the excessive litigation by attorneys and the extent to which the legal professionals add to the polarizing in the case. Family law matters are usually polarizing to some extent, and the polarizing in alienation cases tends to mirror the polarizing in the family.

Many observers recognize that the court system takes too long to resolve issues, especially for high conflict families. When high-conflict families experience significant delays in judicial decision-making, or when court-ordered evaluations take too long, families tend to become polarized and alienation dynamics flourish. Finally, at times it appears that the entire family law system is focused on pathology and blame rather than problem solving and conflict resolution.<sup>10</sup> Such dynamics take a family that might otherwise resolve their differences and create a fertile environment for alienation to develop.

### **Evaluation of Alienation**

Addressing the issues involved in the evaluation of alienation is beyond the scope of this article. At a minimum, however, it's important to focus on the following potential components:

- The attitude, beliefs, and behaviors of the aligned parent;
- The attitude, beliefs, and behaviors of the rejected parent;
- The overall functioning of the child, including his/her temperament and psychological, emotional, and academic functioning. Consideration of the child's peer relationships, extra-

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<sup>9</sup> Lyn Greenberg, Jon Gould, Dianna Gould-Saltman and Philip Stahl, *Is the therapist part of the problem?*, FAMILY LAW QUARTERLY, 37, 2, 241-271.

<sup>10</sup> Wingspread Conferees, *High Conflict Custody Cases: Reforming the System for Children*, FAMILY LAW QUARTERLY, 34, 4.

curricular interests and activities, support systems is also important.

- The history of the family relationships. This needs to include an assessment of marital conflict, domestic violence, and abuse. Also to be evaluated is the history of the child's attachment and relationship with each parent and the extent to which each parent has legitimately supported the relationship with the other parent.
- The level of parental cooperation or conflict and the extent to which the child is exposed to and brought into the middle of the conflict.

For more on evaluating cases in which alienation is alleged, see Stahl and Lee and Olesen.<sup>11,12</sup>

### **Recommended Interventions and Custodial Options**

Depending on the intensity of the alienation and the other dynamics operating in the family, these families should have the entire range of options available to them. In those cases where the alienation is mild to moderate, parent education that focuses on the impact of these issues on children and court orders that ensure that the child spends sufficient time with both parents is likely to be sufficient. Specialized education programs for children may also be quite useful in reducing the child's likelihood of becoming alienated. Therapy for the parents may be needed, as well. The alienating parent may need help in separating his/her thoughts and feelings from the child and in learning to keep the child out of the middle of the conflict. Helping the alienating parent understand the value to the child of maintaining his/her relationship with the other parent is also potentially quite useful. The otherwise-rejected parent may need help in setting reasonable limits and developing empathy for the child and the alienating parent. Therapy for the child is usually focused on reducing the rigid black-white thinking and helping the child to separate his/her feelings from those of the parents.

Therapists who work with these high-conflict families may need specialized training to understand the dynamics involved. It's suggested that any therapeutic intervention be supported by court orders and that, when families have more than one therapist involved, the therapists coordinate treatment to make sure that the goals are consistent and focused on reducing the alienation.<sup>13</sup>

Many of these families will need the services of a parent coordinator. A parent coordinator is usually a licensed mental health professional or attorney who is in a quasi-judicial role to

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<sup>11</sup> Stahl, supra note 6.

<sup>12</sup> Margaret Lee and Nancy Olesen, *Assessing for alienation in child custody and access evaluations*. FAMILY COURT REVIEW, July, 2001.

<sup>13</sup> Matthew Sullivan & Joan Kelly, *Legal and psychological management of cases with an alienated child*. FAMILY COURT REVIEW, July, 2001.



monitor the family and make recommendations to the court on an ongoing and regular basis.<sup>14</sup> Such coordinators need to sufficient training to develop a comprehensive understanding of the family dynamics, the time and availability for intensive case management, and the authority to monitor and enforce compliance with the intervention plan.<sup>15</sup> The parent coordinator may help ensure that contact with the otherwise-rejected parent occurs as ordered and may also make ongoing recommendations designed to reduce the likelihood that the alienation will flourish.

One of the most controversial aspects of alienation comes from Gardner's recommendation of an immediate change of custody in severe cases of alienation. In general, he took the position that, whenever there was severe alienation, the courts should order a change of custody to the rejected parent and he has reported that this was successful in nearly 100% of the cases in which the courts ordered such a change.<sup>16</sup> I have always felt that this solution is theoretical and has not been sufficiently tested by adequate research. Johnston and Roseby expressed concern that more vulnerable children might regress and some could even be suicidal if the court ordered such a change in custody.<sup>17</sup> I've always felt that certain cases might clearly be appropriate for a change in custody while others would likely be inappropriate for such a rigid position.

While my thoughts are also theoretical, and we clearly need more research in this area, I've felt that for many children, especially adolescents who are doing reasonably well in all other aspects of their life, an abrupt change of custody to fix the alleged alienation would be risky. We might be creating new problems that are more severe for the child than the ones we are trying to fix. My thoughts have been more consistent with the recommendations of Kelly and Johnston<sup>18</sup>, in which therapeutic and child-centered recommendations are indicated. In such cases, it may be more appropriate to resolve the alienation via a combination of increased time with the rejected parent and court-ordered therapy and parent-coordination. In my opinion, I have often felt that court-ordered joint physical custody may be more appropriate, as well. We need to be especially careful with adolescents, though forcing time with the rejected parent is more likely to be successful with school-aged children. The key is to arrange for a neutral child-custody evaluation, by someone trained in the dynamics of alienation, before making any decision. Thus, rather than arbitrarily changing custody from one parent to the other, I believe that a range of potential options exist. This range of options includes:

- A change of custody to the other parent;
- Joint physical custody with the child spending approximately equal time with each parent in a court-ordered arrangement;

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<sup>14</sup> AFCC Parent Coordinator Task Force. For information, see [www.afccnet.org](http://www.afccnet.org)

<sup>15</sup> Sullivan and Kelly, supra note 13.

<sup>16</sup> Richard Gardner, *Should Courts order PAS Children to Visit / Reside with the Alienated Parent?: A Follow-Up Study*. American Journal of Forensic Psychology, 19, 3, 61-106.

<sup>17</sup> Johnston and Roseby, supra note 6.

<sup>18</sup> Kelly and Johnston, Supra note 5.

- Continued primary custody with the alienating parent while using therapy and parent-coordination to assist in supporting and improving the child's relationship with the rejected parent; and
- Continued primary custody with the alienated parent while encouraging the rejected parent to withdraw from the child's life until the child is older and more stable and ready to deal with the conflicts that may occur in trying to maintain both relationships.

All of these options have been discussed in greater detail by Stahl and by the authors in the special journal issue of *Family Court Review*.<sup>19</sup> As a very general rule, it's my experience that younger children can be forced more easily to spend time with a rejected parent, but, as children move towards adolescence, it may be more difficult to force that contact between the child and parent. In addition, while some children might struggle if they have an abrupt change of custody, they might do fine if there is a transitional change to joint physical custody. Then, if the forces that contributed to the alienation continue, the change of custody to the previously rejected parent may be easier for the child.

Finally, for attorneys, if you're confronted with a case in which there is apparent alienation, I'd recommend the following:

- Regardless of your role, I would encourage a thorough evaluation by a psychologist or other mental health professional in your community who can be available quickly and who has training and knowledge about evaluating cases with allegations of alienation. It is critical, at an early stage of the litigation, to differentiate between legitimate and understandable estrangement and pathological alienation.
- If you are the attorney for a parent who might be contributing to the child's alienation against the other parent by criticizing the other parent and putting the child in the middle, I would encourage you to help your client develop insight into his/her behavior and recognize how damaging it is to the child. Parent education and participation in therapy might be beneficial.
- If you are the attorney for a parent who is being rejected, I would encourage you to help your client understand ways that he/she might be contributing to the rejection and avoid criticizing the other parent in return. Your client will need empathy for the child's position before the child can reduce his/her polarization.
  - If you are the attorney for the child, I would encourage you to take a strong role in helping your child client recognize the need for a relationship with both parents. You might be in a position to advocate against your child client's wishes or at least encourage the court to appoint a "best interests attorney" who will take that stand with the court.<sup>20</sup>

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<sup>19</sup> Stahl, *Supra* note 6. Also *Family Court Review*, Special Issue on Alienation, 39, 3.

<sup>20</sup> Elrod, L. 'Raising the Bar for Lawyers who represent children: ABA standards of practice for custody cases'. *Family Law Quarterly*, 37, 2, 105-125.

- Finally, if it is determined that alienation is being caused by multiple factors, including the focus on litigation and blame, I would encourage you to look at your own behavior and see if you are mirroring the polarization of the parents in your relationship with opposing counsel. To the extent that the two attorneys are contributing to the problem, I would encourage both of you to work together to support conflict resolution rather than conflict and blame.

Until there is more research to understand all the forces that contribute to a child's potential alienation, and until we have more research in understanding and differentiating between a child's alienation and realistic estrangement, and until there's more research on the effect of different custody and access options, I would discourage any arbitrary and rigid response to these issues.