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# **LAW GUARDIAN**

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## **REPORTER**

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### **FATHER? WHAT FATHER? PARENTAL ALIENATION AND ITS EFFECT ON CHILDREN**

**By Chaim Steinberger  
Part One**

#### **Preface**

There is no doubt that every child needs “frequent and regular” contact with both parents to develop in a psychologically healthy manner.<sup>2</sup> A custodial parent is, therefore, obligated by law to ensure the continued relationship between the child and the non-custodial parent.<sup>3</sup> The Appellate Division, Second Department, explained why frequent contact is needed between them:

Only [with frequent contact] may a non-custodial parent provide his child with the guidance and counsel youngsters require in their formative years. Only then may he be an available source of comfort and solace in times of his child’s need. Only then may he share in the joy of watching his offspring grow to maturity and adulthood... Indeed, so jealousy do the courts guard the relationship between a non-custodial parent and his child that any interference with it by the custodial parent has been said to be “an act so inconsistent with the best interests of the children as to, per se, raise a strong probability that the [offending party] is unfit to act as custodial parent.”

... The decision to bear children, [moreover], entails serious obligations and among them is the duty to protect the child’s relationship with both parents even in the event of a divorce. Hence, a custodial parent may be properly called upon to make certain sacrifices to ensure the right of the child to the benefits of visitation with the non-custodial parent. The search, therefore, is for a reasonable accommodation of the rights and needs of all concerned, with appropriate consideration given to the good faith of the parties in respecting each other’s parental rights.<sup>4</sup>

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Nevertheless, a twelve-year study commissioned by the Family Law Section of the American Bar Association of over 1,000 divorces found that “parental alienation,” the programming of a child against the other parent, occurs regularly, sixty percent (60%) of the time, and sporadically another twenty percent.<sup>5</sup>

New York courts have in the past “zealously protected” the non-custodial parent’s visitation rights against interference by the custodial parent.<sup>6</sup> Custodial parents seeking to exclude the other parent have, therefore, taken to socially and psychologically turning the child away from the other parent so that the child, and not the custodial parent, refuses the visitation. This type of “alienation” has been characterized by the Second Department as a “subtle and insidious” form of visitation interference that may cause even “greater and more permanent damage to the emotional psyche of a child” than the garden variety visitation interference.<sup>7</sup>

This article will summarize the leading literature in the field of alienation. Part One will review the different techniques employed by alienating parents to marginalize and exclude the other parent from their children’s lives. It will set out the most common symptoms of alienation so that the reader will be more attuned to recognize and deal with potential alienation,

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and counsel clients who are effected by it. Finally, it will describe the profound and enduring devastating psychological, emotional and social consequences alienation has on its primary victims—the children.

Part Two of the article will appear in a subsequent issue [of the original publication, the NYSBA Family Law Review] and

describe the effective treatments for alienation, and how New York courts have traditionally and recently dealt with the issue. Because alienation has such profound inter-generational consequences, judges and lawyers must be ever-vigilant to detect and deal with alienation, no matter the guise by which it is concealed.

**Parental Alienation**

Parental alienation is the turning of a child against a parent by the other parent.<sup>8</sup> It is a form of social and psychological brainwashing and is accomplished by one parent, the “alienating” parent, indoctrinating the child against the other, “target,” parent.<sup>9</sup> Over time, it destroys the bonds of love between the parent and child.<sup>10</sup> When successful, it is so effective that the children themselves become unwitting accomplices and turn against the target parent.<sup>11</sup> The children then further vilify the target parent on their own, even without the further urging of the alienating parent.<sup>12</sup> When a child becomes an unwitting ally to the alienating parent, the child is said by some to have become a victim of Parental Alienation Syndrome (“PAS”).<sup>13</sup> Psychologist Dr. Ira Turkat of the University of Florida College of Medicine, summarizes it this way:

In a nutshell, PAS occurs when one parent campaigns successfully to manipulate his or her children to despise the other parent despite the absence of legitimate reasons for the children to harbor such animosity. The effort to poison the relationship between the offspring and the targeted parent may be extensive and at times, relentless.<sup>14</sup>

*In J.F. v. L.F.*, 181 Misc. 2d 722, 694 N.Y.S.2d 592 (Family Court, Westchester Co. 1999), Judge Edlitz characterized Parental Alienation Syndrome this way:

Parental Alienation Syndrome occurs when one parent uses his/her influence with his/her child to undermine the relationship between the child and the other parent. It typically arises when the parents are engaged in divorce proceedings or a custody dispute. (*See, People v. Loomis*, 172 Misc. 2d 265, 267.) . . . [It is described] as a

disturbance in which children are not merely systematically and consciously “brainwashed” but are also subconsciously and unconsciously “programmed” by one parent against the other.<sup>15</sup>

Dr. Janet Johnston described the historical recognition of this phenomenon:

The phenomenon of a child’s strident rejection of one parent, generally accompanied by strong resistance or refusal to visit or have anything to do with that parent, was first recognized by Wallerstein and Kelly (1976, 1980) in their seminal study on children of divorce. They described it as an “unholy alliance” between an angry parent and an older child or adolescent. Later, [Dr. Richard] Gardner (1987, 1998) coined the label “parental alienation syndrome” (PAS) to describe a diagnosable disorder in a child in the context of a custody dispute, and it is this entity which has generated both enthusiastic endorsement and strong negative response.<sup>16</sup>

The touchstone of Parental Alienation Syndrome is where a child’s anger or animosity is disproportionate with the reasons given by the child for that anger or animosity. Dr. Gardner’s formulation of PAS includes several components:

The first is a child who exhibits excessive hatred of a target parent (an animosity that often extends to the parent’s extended family), makes weak, frivolous and absurd complaints, justifies the stance by quoting “borrowed scenarios,” and lacks any ambivalence or guilt towards the hated parent. The second component is a vindictive parent who is involved in consciously or unconsciously brainwashing the child into this indoctrinated stance; and third, are false allegations of abuse that are generated by the alienating parent and child.<sup>17</sup>

Dr. Johnston herself, however, suggested a slightly different focus when analyzing children who are estranged from the non-custodial parent.

### **Dr. Johnston’s Formulation**

Dr. Janet R. Johnston was part of a task force convened to study the problem of children who were alienated from one of their divorcing parents.<sup>18</sup> She presented her article at the International Conference on Supervised Visitation.<sup>19</sup>

Dr. Johnston disagreed to some extent with Dr. Gardner. She believed that the focal point of the inquiry should be the child and not the alienating parent.<sup>20</sup> Her formulation, therefore, is simpler: “An alienated child is defined as one who expresses, freely and persistently, unreasonable negative feelings and beliefs (such as anger, hatred, rejection and/or fear) toward a parent that are significantly disproportionate to the child’s actual experience with that parent.”<sup>21</sup>

Although there may be a “kernel of truth” to the child’s complaints and allegations about the rejected parent, the child’s grossly negative views and feelings are significantly distorted and exaggerated reactions. Thus, this unusual development is a pathological response. It is a severe distortion on the child’s part of the previous parent-child relationship. These youngsters go far beyond an alignment in the intensity, breadth, and ferocity of their behaviors toward the parent they are rejecting. They are responding to complex and frightening dynamics within the divorce process itself, to an array of parental behaviors, and as a result of their own early developmental vulnerabilities which have rendered them susceptible. While the profound alienation from a parent more often occurs in high conflict custody disputes, it is believed to be an infrequent occurrence among the larger population of divorcing children.<sup>22</sup>

The success of the alienation programme is determined by the personalities and vulnerabilities of the child and the length and intensity of the indoctrina-

tion.<sup>23</sup> “[T]he intensity and longevity of the alienating processes, when combined with other important parent and child variables . . . might create exponentially unbearable pressures on the child, resulting in alienation from a parent.”<sup>24</sup>

### Methods of Alienation

Alienating parents employ many different techniques to program their children away from the target parent. Many of them are apparent. Others, though insidious, are just as pernicious. Some methods are intentional, deliberate and willful, while others might even be utilized subconsciously by the alienating parent.

One of the “basic techniques” alienating parents use is to send the message, either overtly or subtly, that the target parent is insignificant or irrelevant to the child.<sup>25</sup> This may be done by ignoring the target parent at social functions and elsewhere, or by denying or refusing to acknowledge his existence.<sup>26</sup> By choosing to “never talk about the other parent,” a subtle message is sent that the other parent is insignificant.<sup>27</sup>

The target parent’s insignificance can also be signaled by using body language to show that he is unworthy or insignificant.<sup>28</sup> The alienating parent might avoid eye contact with the target, use a hand gesture that is dismissive or indicates negativity, look away when he is present, or, when the child raises the other parent in conversation, abruptly terminate the conversation.<sup>29</sup> Children are attuned to these subtle signals and interestingly enough, often adopt them and “mirror [these] physical pattern[s] in counseling or other evaluation sessions.”<sup>30</sup>

Another common technique is the destruction or desecration of photographs of the target, or otherwise not permitting the child to keep such photographs or mementos of the other parent.<sup>31</sup>

The alienating parent may exclude the target parent by not relaying messages that are sent by the target to the children.<sup>32</sup> They might “forget” telephone messages left for the children or “lose” the letters or postcards sent them.<sup>33</sup> She might also “forget” to relay holiday greetings or even lie and tell the children, “Your father hasn’t called.”<sup>34</sup> In addition to excluding the target, the alienating parent often intends to make the children feel unwanted so that they develop hostile and distant feelings towards the target.<sup>35</sup>

Another insidious but powerful method of excluding the target is for the alienating parent to refuse to acknowledge any positive experiences the children have with him.<sup>36</sup> By not responding “to the excitement and joy” the children express about the other parent and acting indifferently to their excitement, the alienating parent effectively marginalizes the target. “This ‘ho-hum’ approach has the effect of numbing the children from sharing [their positive] experiences with the programming parent.”<sup>37</sup>

Ironically, when the children later learn to suppress their happiness and joy, the alienating parent then claims that the children are “sad” when they return from being with the target:

Interestingly, the programmer may then claim that the children are not benefitting from contact with the other parent because “they are gloomy when they return.” The gloom may be a result of the children giving the brainwashing parent what he or she wants—an unhappy child. This accounts for the opposing views divorced parents hold concerning the time the children spend with the other. One parent says, “I think they had a great time.” The other says (sarcastically), “Sure they did.” It is [also] common to find children expressing guilt about enjoying the target parent as a result of this nonsupport from the programming/brainwashing parent.<sup>38</sup>

A parent may also subtly, yet powerfully, attack the target by attacking his family, career, living arrangements, travel, activities, associates or any other circumstance identified with him.<sup>39</sup> Attacking the target indirectly in this way also provides the alienating parent with “cover” to deny the attack.<sup>40</sup> The child may also be forced to take sides in the battle between the parents as issues are raised and discussed with the child that should only be discussed with the other parent.<sup>41</sup> Children understand the undercurrents of parents’ statements. A child, therefore, is likely to understand the statement, “Our summer vacation would really be fun if we had more time,” to mean that the target parent is preventing the child from having a fun vacation with her.<sup>42</sup>

Another method routinely used by alienating parents is to manipulate or rearrange the child's time schedules so that the child "does not have time" to see the other parent.<sup>43</sup> "The manipulation of time becomes the prime weapon in the hands of the alienator, who uses it to structure, occupy, and usurp the child's time in order to prevent 'contaminating' contact with the lost parent."<sup>44</sup> This elimination of or decrease in contact, prevents the target parent from maintaining his bond with the child:

Situations in which contact between the non-custodial parent and the child is diminished enhance the viability of successful programming. If a child does not have much contact with one parent, he or she is not afforded the experiences needed to contradict the programme. . . . [Deprogramming] can best be done through increased experience and physical contact between the target and child.<sup>45</sup>

An alienating parent may also exclude the target parent by failing to inform him of important events in the child's life:

Not informing the other parent of school dates, plays, conferences, ceremonies, awards, sporting events, and the like is a way of signifying to the children that the other parent lacks importance. . . .

Children are deeply affected by the presence or absence of parents at educational, social and religious functions. After a time, they develop the veneer of an "I don't care" attitude. After interviewing 200 children between the ages of four and eighteen years on this issue, it was noted that virtually every child desired both parents to be present at as many of these functions as possible. Children would say, "Even if my dad can't make it, my mother should have told him." . . . Clearly, children are often aware that one parent does not participate in social functions due to the aggressive nature of the other parent. Children know this, even in cases where they say that the

aggressive parent is positive and constructive in other ways.

In more extreme cases, the brainwashing parent actually obstructs the flow of information to the target parent by not supplying schools with his or her proper name and address. One of the most common problems in custody-conflicted families is that the mother places the stepfather on the educational records as the father of record. In a review of our cases, we found that mothers were five times more likely to participate in this behavior than fathers. Fathers did not appear to have the same social need to present the stepmother as the mother, whereas mothers had a very strong need to present stepfathers as "the" father. As part of this pattern, mothers seem less comfortable in attending social functions when the birth father is present. Fathers on the other hand, seem to have a greater sense of comfort in attending social functions when the birth mother *is* present.<sup>46</sup>

Denigration may be used by making moral judgments against the target parent's values, lifestyle, choice of friends, career or financial or relational successes or failures in life.<sup>47</sup> These criticisms are often:

insidious, occurring over a period of time with different degrees of intensity but always powerful. Like the wearing away of a stone constantly assaulted by waves, the child's perception of the target parent changes from its original, more positive, view finally conforming to the programming parent's opinions and sentiments.

In such cases, the effect is almost irreversible. These children are no longer able to accept both parents as equally good. . . . These beliefs become so ingrained that the parent who created them no longer has to promote the desired perceptions. They have been given life within the child's own

mind. So much so, that the parent may honestly report that he or she is not actively doing anything by word or deed to thwart the target parent's relationship with the child.<sup>48</sup>

Even without deliberately intending to interfere with the other parent's relationship, a parent whose view of the other is "colored," might naturally "selectively perceive and distort" the child's relationship with the non-custodial parent.<sup>49</sup> Because the parent's view of the child's interaction with the other parent is distorted, the parent may unintentionally distort the child's view:

[I]t is common for the couple's expressed disappointments with each other to be mirrored in their concerns for how the other parent will treat the child. For example, if a woman has experienced her ex-spouse as emotionally neglectful, she expects him to be neglectful of her child. If the child then comes back upset or depressed after spending time with his dad, the mother attributes the difficulty solely to the father's lack of care. At the same time, other, more positive aspects of the father-child relationship are ignored or denied (i.e., the fact that this father and child have a lot of fun together and that the child feels a painful loss each time they part). In responding sympathetically to her child on his return home, the mother incorrectly interprets and then amplifies the child's sadness and anxiety. As a result, the child's emerging reality testing about his own feelings and ideas are ever so slightly and insidiously distorted. Furthermore, the mother's own anxiety and distress about her child's sadness are intensified because she is not able to communicate and clarify with her ex-husband about why the child might be upset. She is left feeling helpless about protecting her child.<sup>50</sup>

An alienating parent may also attempt to characterize normal differences with the target parent as "good vs. bad" or "right vs. wrong."<sup>51</sup> Doing so places the

children in the middle of the battle and requires them to choose sides in their parents' conflict.<sup>52</sup>

A parent might also constantly evoke and remind the child of a relatively insignificant early traumatic incident.<sup>53</sup> Though the incident may have occurred, it would otherwise likely have been forgotten or not have a strong impact on the child.<sup>54</sup> By constantly evoking and emphasizing the incident, the parent imbues it with greater significance and uses it to a tactical advantage to create "a family legend that can contribute to child alienation [and] estrangement."<sup>55</sup> "In these cases, there is a mix of realistic and unrealistic fear, anger and avoidance that needs to be distinguished."<sup>56</sup> "Sometimes, earlier disciplinary interactions involving angry or confrontative (but not abusive) behaviors by the rejected parent are repackaged as confirmation of violence toward the child."<sup>57</sup>

An alienating parent might become "emotionally abandoning, rejecting, or even vengeful" to a child who expresses his or "her own individual needs" (who "individuates") or who expresses a desire "to move toward the other parent."<sup>58</sup>

When 5-year-old Sally expressed a wish to call her father on the phone and tell him how she learned to jump rope that day, her mother withdrew into sullen anger. Inexplicably to Sally, her mother was "too tired" to read her [the] usual bedtime story that evening.<sup>59</sup>

After a while, however, the child figures out that contact with the target parent produces this reaction with the custodial parent.<sup>60</sup> Doctors Johnston and Roseby point out that in such cases, because "the punishing message is typically unspoken [it] is . . . impossible to be spoken about, which makes it even more pernicious" and difficult to detect.<sup>61</sup>

Sometimes, when a child shares stories of happy times with the other parent, the discussions will be met with anger and negativity or apathy. Although initially the reaction is confusing, a child soon absorbs the message: "I don't like it when I hear that you love your mother, or enjoy your time with her. I don't like you for loving her."

After the rule within the message is learned, it becomes too risky [for the child] to share any more positive or happy scenarios. Herein lies the beginning of the programmer's power. The child knows that he or she is not likely to lose the nonprogramming parent's love, because no matter what, it has been proved to be unconditional. However, the child has observed and has been the recipient of the conditional love of the programmer and must move to cement that love through abject compliance—even to his or her own detriment.<sup>62</sup>

“Sometimes the mere presence of the child, or the child's physical resemblance to the ex-spouse, produces a toxic, phobic reaction in the [alienating] parent.”<sup>63</sup> Similarly, if the child acts like the target parent, the custodial parent may feel “resentment, even rage, toward the child, who at that moment is undifferentiated from the hated or feared ex-partner.”<sup>64</sup>

Children learn early on to avoid negative consequences.<sup>65</sup> They also avoid situations which might be somewhat similar, even if only in their minds, to those that gave rise to the negative consequences.<sup>66</sup> Thus, “[a] youngster who associates his father's arrival to pick him up for visits with another parental fight [may become] immobilized when his father calls him on the phone.”<sup>67</sup>

Similarly, a child who constantly hears disparaging remarks about a parent, may lose confidence in and love for that parent and feel intolerably confused:

Extremely negative views of the rejected parent may be freely, angrily and repeatedly expressed to the child by the [parent with whom the child is “aligned”:] “She never wanted you,” “I was your *real* parent,” “You call me if your dad touches you anywhere,” “I'm sure he'll be late as usual.” The effect of the continued drumbeat of negative evaluation of the parent is to erode the child's confidence in and love for the rejected parent and to create intolerable confusion. These evaluations might also be expressed

indirectly, covertly, or unconsciously and might include innuendoes of sexual or child abuse or implications that the parent is dangerous in other ways. Whether such parents are aware of the negative impact on the child, these behaviors of the aligned parent (and his or her supporters) constitute *emotional abuse* of the child.<sup>68</sup>

Alienating parents may also conceal their manipulations by claiming to permit the child to decide whether the visitation should occur. Of course the alienating parent has already, consciously or subconsciously, indicated to the child what the “correct” choice should be:

Visitation with a targeted parent is often sabotaged with subtle PAS programming. For example, a child in a PAS environment becomes attuned to the alienating parent's desire for the child to despise the other parent. To secure acceptance, the child may make statements that suggest an uncertainty about visiting with the targeted parent or a lack of desire to do so; the alienator may then act in a “neutral” manner by instructing the child to believe that it is the child's decision whether or not to visit with the other parent. This “neutrality maneuver” serves to further alienate the targeted parent by “passively” discouraging the child from participating in visitation. Under these circumstances, the child is likely to learn quickly to avoid open expressions of interest in visiting the “hated” parent.<sup>69</sup>

Children at different ages may have different motivations for refusing visitation with the non-custodial parent.<sup>70</sup> “For example, a four-year old might resist visitation because of difficulty separating from a primary caretaker, [w]hereas a seven-year old who refuses to visit his other parent may fear retaliation and abandonment by the aligned parent, [and] a preadolescent might be choosing a stance that looks like alienation as a way of coping with an unbearable loyalty conflict in a chronically conflicted divorce.”<sup>71</sup>

“Anxious, fearful, and passive children lack the resiliency to withstand the intense pressures of the custody battle and the aligned parents’ alienating behaviors. It might be psychologically easier for them to choose a side to avoid crippling anxiety. Children with poor reality testing are more likely to be vulnerable.”<sup>72</sup> “In addition, poor self-esteem makes children especially susceptible to promises of enduring love, especially when a parent has been rejecting and ambivalent toward the child.”<sup>73</sup> Children who are insightful, clear thinking, and morally developed can often maintain a greater balance through the high-conflict divorce.<sup>74</sup> “Although pressured by alienating processes and parents, they can analyze their parents’ behaviors and the nature of their parent-child relationships and, despite their anger and sadness . . . stay connected to each parent.”<sup>75</sup>

Several factors increase the vulnerability of children to alienation. “Those children who are very dependent on the aligned parent, either emotionally or physically, are . . . more likely to respond to alienating processes and behaviors. Some of these youngsters have a history of being conditionally loved and erratically rejected by the aligned parent, and the child’s complete rejection of the other parent might offer a long-sought opportunity to achieve total acceptance and unconditional love.”<sup>76</sup>

“Most often, aligned parents’ behaviors reflect several organizing beliefs that might not be consciously spiteful and vindictive but nevertheless are potentially very damaging to the child’s relationship with the other parent. As a consequence of their own deep psychological issues, the aligned parent can harbor deep distrust and fear of the ex-spouse and be absolutely convinced that he or she is at best irrelevant and at worst a pernicious influence on the child. Consequently, a first major organizing belief is that their child does not need the other parent in their lives. Although aligned parents might insist that the child is free to visit, the rejected parent’s attempts to visit or contact their child frequently are seen as harassment. Phone calls, messages, and/or letters often are not passed on to the child. Information about school, medical, athletic, or special events are not provided to the rejected parent, in effect completely shutting that parent out of the child’s life. In the most extreme cases, all references to the rejected parent are removed from the residence, including pictures (which might be torn apart in front of the child to exclude that parent). In such situations, most children quickly learn not to

speak of the rejected parent. In response to requests for access by the rejected parent, the aligned parent strongly supports their angry child’s ‘right to make their own decision’ about whether they will visit.”<sup>77</sup>

“[A] brainwasher [who] knows that the target parent is a homebody and that the child enjoys activities, [may] go out of the way to plan exciting adventures both on their time and during the time when the child is with the target parent. Rather than protecting the parent-child relationship and encouraging contact, the brainwasher makes sure that the child hears a detailed accounting of what he or she missed out on. If these scenarios recur, most children come to resent the ‘sacrifice’ they are making by spending time with the target parent. . . . The result is a child who no longer desires to have continuing contact with a parent unless entertainment is promised.”<sup>78</sup>

A brainwashing parent may also induce fear and anxiety in a child by raising questions about any one of the child’s many “root . . . childhood fears.”<sup>79</sup> Children are very concerned for their safety and security and fear that they will not be taken care of.<sup>80</sup> By implying that the target parent will not care about or protect a child, the alienating parent can create “disequilibrium between the [target] parent and child.”<sup>81</sup>

A brainwashing parent may also attempt to “elevate” a new spouse to replace the child’s biological parent.<sup>82</sup> One such parent, “threw a glass of water in the child’s face whenever she refused to call the stepparent ‘Daddy.’”<sup>83</sup>

Doctors Kelly and Johnston point out that “there is often significant pathology and anger in the parent encouraging the alienation of the child.”<sup>84</sup> An average parent, unencumbered with emotional shortcomings, would “seek different avenues and more rational means of protecting their child,” “[e]ven where there [has been a] history of child abuse,” rather than alienating the child from that parent.<sup>85</sup> Other doctors have similarly observed that the typical alienating parent has a personality disorder.<sup>86</sup> “[T]he alienating parent is one who uses denial to cope with emotional pain, lacks a capacity for intimacy, is overly suspicious and distrustful, has a strong sense of entitlement, and has little anxiety or self-insight.”<sup>87</sup>



## Symptoms of Alienation

A child does not naturally cut off contact from a parent who displays love and affection for the child. Thus, when a child avoids contact with a parent, the reason for it must be understood.

The greatest indicator of alienation is an adversity by a child to a parent that is disproportionate to the reasons given by the child for it.<sup>88</sup> Thus, the first question to ask when confronted with a possible alienation situation is whether the child's claimed reasons for not seeing the parent can reasonably justify the break-off of contact between them. If the reasons cannot justify the lack of contact, there is a significant likelihood that alienation has occurred.

Another indicator of alienation is a child who shows affection to the target parent when the other parent is absent, but acts indifferently or defiantly to the target when in the presence of the other parent.<sup>89</sup> Such an "inconsistent 'chameleon' quality is a diagnostic hallmark of [alienation]."<sup>90</sup>

Confusion or ideas that are inconsistent with the child's observations are also common indicators of alienation,<sup>91</sup> as is a child who has repeatedly received negative information about the non-custodial parent.<sup>92</sup> A child who portrays a parent as "immoral, cheap, irresponsible or unloving, or uses any other globally negative descriptive terminology" has likely been subjected to alienation.<sup>93</sup> Similarly, "collusion or [a] one-sided alliance" by the child with one parent is a signal of potential alienation.<sup>94</sup>

The child who works simultaneously with one parent and against the other is typically operating in collusion with the brainwasher and will be unable to maintain a positive relationship with the target parent. These children closely identify with the brainwasher and behave like a spy or conduit of information. They view the broken family in terms of "us" versus "him or her." The more entrenched the identification, the less able the child is to accept positive gestures or sentiments from the target parent. Perceiving the target parent as acting against "us," any positive features that

the target parent possesses are reinterpreted as intended to inflict hurt. The most benign deed, such as giving the child a present, is analyzed for scurrilous motives and becomes a "buy-off" or prompts a statement such as, "Big deal—where's the support check?"<sup>95</sup>

Other symptoms which might indicate alienation include an unnatural rigidity within a child or a maturity level "that noticeably veers away from the familiar for that particular child."<sup>96</sup> Similarly, a child who "sits in lofty moral judgment of a parent has usually been programmed to believe that [the target] parent is leading an immoral life."<sup>97</sup> A child who responds to parental discipline by threatening, "If you—scream/punish/hit/give me a curfew/make me sit here and do homework/make me do housework/cook/take away my car—I'll tell Mom [or the judge]" has most likely been similarly programmed.<sup>98</sup> Confusing the child as to a birth parent's importance *vis à vis* a stepparent or significant other, can signal a "programme" and an attempt to "elevate" a new family to replace the old.<sup>99</sup>

Target parents are often criticized no matter what they do.<sup>100</sup> "Even though the brainwasher may be doing the same thing with the child as the target parent, . . . the target parent's behavior . . . is [often portrayed as] fraught with foreboding problems for the child's future."<sup>101</sup>

Though parents frequently "report that a child is afraid to go off with the other parent . . . some fears have no connection to reality and are irrational fears that evolve from programming and brainwashing or from the emotional atmosphere created by a fearful parent."<sup>102</sup>

## Effects of Alienation

The estrangement of a child from one of its parents may be cataclysmic to the child's long-term development and well being. It is likely to have catastrophic consequences for that child throughout the child's life and, as will be shown, is likely to effect future generations as well.

## **A Child's General Need for Both Parents and the Anguish of War**

Every child needs both parents to develop properly.<sup>103</sup> That is because throughout our lives we subconsciously base all of our expectations and model all of our relationships on the relationships we had with both of our parents.<sup>104</sup> The elimination of a parent from a child's life, therefore, has life-long consequences for the child.<sup>105</sup> "For those children who remain with the alienating parent and lose contact with the targeted parent, the losses are enormous."<sup>106</sup>

Even when there is no alienation, psychologists have noted that long, intense divorce battles cause severe psychological problems for children.<sup>107</sup> "[M]arital and divorce conflict that focuses on the child, and high intensity and overtly hostile marital conflict, are well established predictors of psychological adjustment problems in children."<sup>108</sup>

Children are more at risk to be pulled into the high-conflict divorce as major players and Greek chorus. . . . The intensity of the conflict, its continued burdensome presence for one or more years, the polarization of extended family and larger community, and the failure of parents to address their children's needs combine to create intolerable anguish, tension and anger for children. One psychological resolution for the child is to diminish the feeling of being torn apart by rejecting the "bad" parent and ceasing all contact.<sup>109</sup>

"In situations where parents are litigating custody, children who are aware of the battle are almost always caught up in the escalation, and feel powerless to hinder it. One day they tell Mom what she wants to hear; the next day they do the same with Dad. Most children do not want to make . . . custody decisions, intuitively understanding that to do so could carry the burden of dreadful rejection of one parent or the other."<sup>110</sup>

"The loss [to a child of the relationship with a parent] cannot be undone. Childhood cannot be recaptured. Gone forever is that sense of history, intimacy, lost input of values and morals, self-awareness through

knowing one's beginnings, love, contact with extended family, and much more. Virtually no child possesses the ability to protect him- or herself against such an undignified and total loss."<sup>111</sup>

Children deprived of a parent may, as a result, suffer loss, guilt, confusion, fear, powerlessness, identity crisis, anger, withdrawal, anxiety, a retreat into a fantasy world, hopelessness, inadequacy, fears, phobias, depression, suicidal ideation, sleeping and eating disorders, academic problems, withdrawal from one or both parents, drug abuse, peer group problems, obsessive-compulsive behavior, motor tension (tics, fidgeting or restlessness), psychosomatic disorders, damaged sexual identity and other problems.<sup>112</sup> Some children will "act in" rather than act out and, internalizing their emotions, "develop psychogenic constipation, headaches or stomachaches or suffer from emotional withdrawal, experience academic or social problems at school, or become severely depressed."<sup>113</sup>

### **Anxiety**

By inculcating a message that children are not permitted to love both parents, alienating parents make children feel anxious each time "they wish to express love to the target parent. They might feel anxiety over the smallest gesture, such as making a Father's Day card in school but not being able to present it to the [other] parent."<sup>114</sup>

### **Hiding Affection**

A child who senses that a parent disapproves of the other, might show affection to the target parent only when alone with him or her.<sup>115</sup> When the other parent is present the child may act indifferently or even in a hostile manner to the target parent.<sup>116</sup> Thrust into this "who[m] do I betray?" situation "creates the passageway for the possibility of actual delusional thinking" by the child.<sup>117</sup>

Leaving a child in this pathological environment is most damaging and, under these circumstances, a child may many times become anxious, isolated and depressed. In time, if proper intervention is not forthcoming, the child develops a deep and profound sense of self-hatred and shame for condemning the other parent. These

children tend to become despondent, withdrawn, and develop psychopathic manipulative characteristics which may be carried into adulthood.118

### **Making Sense of the World**

One of the core concerns for children, generally, is to learn to determine what is true and what is false.119 “Ordinarily, children use their parents as [a] social reference for what is safe and trustworthy.”120 Children whose parents are battling however, “have the profound dilemma of making sense out of vastly contradictory views communicated through the hostility, fear and distrust of their opposing parents (Who is safe? Who is dangerous? Whom can you trust?).”121 This leaves them confused and anxious and prevents their normal development.122

Moreover, by necessity these children must stay attuned to the “emotional states and needs of their custodial parent.”123 Imparting such great importance to a parent’s emotional needs reduces the children’s sense of self-importance in relation to others.124

### **Lack of External Resources**

Children may “withdraw into themselves as they are forced to close off from the target parent.”125 They may also retreat into their own secret fantasy world in a desperate effort to maintain the much-needed contact with the rejected parent.126 As a result, youngsters who have survived their parents’ intense battles:

are likely to be hypervigilant and distrusting of others, and do not expect the world to be a cooperative or protective place. Unlike typically developing children, who tend to turn to others, especially adults for their needs, these children turn inward, unto themselves, to figure out how to solve problems and interpret social reality. Unfortunately, their inner resources are likely to be meager, because these children defend against the double-binding inconsistency of their most significant relationships by avoiding complexity, ambiguity, and spontaneity. . . . The bind is that, as children turn inward, they must rely on

an increasingly impoverished and distorted understanding of the nature of reality. Paradoxically, their path to safety leads them further and further away from new self-realizing possibilities.127

### **Self-Blame**

Children typically feel responsible for their parents’ disputes and divorce.128 Yet they feel powerless to do anything about it.129 These contradictory feelings of super-importance but inadequacy and powerlessness can be psychologically devastating to children:

“If I were dead, they wouldn’t need to fight anymore” is a tragically self-blaming, depressive fantasy that is not uncommon. Feelings of great power and importance are juxtaposed, therefore, with paradoxical feelings of being overwhelmingly inadequate in the face of the parents’ intractable anger. Hence the child’s sense of agency, competence, or power is undermined. It follows that these children often have trouble directly asserting their own needs and wishes. Instead, they are likely to maintain an underlying oppositional and alienated stance masked by a compliant eagerness to please others. This facade can be maintained only until the children become overwhelmed by their own neediness, at which time they regress or explode into irritable-distressed or demanding-aggressive behavior.130

### **Identification with the Rejected Parent**

All children contain characteristics of each of their parents. A child who rejects a parent, therefore, necessarily has to reject and loathe that part of him- or herself that is similar to the rejected parent.131 Such a child is necessarily “vulnerable to self-loathing, self-rejection, and confusion regarding sex-role identification.”132 The more the child resembles the rejected parent, the more the self-loathing is intensified.133

Additionally, a child who sees one parent rejected by the other, likely fears being rejected him- or herself—for possessing the same characteristics as the rejected parent.<sup>134</sup> “Sensing that the programmer/brainwasher detests the other parent, the child fears that she or he may be similarly detestable.”<sup>135</sup> “This scenario is especially difficult for those children who do not spend much time with the target parent whom they may be most like. Isolated from the target, these children can suffer through childhood or adolescence with lonely feelings of rejection over nothing within their power to control.”<sup>136</sup>

The mere witnessing of one parent’s antipathy toward the other can ultimately lead to self-repudiation by biological association. It is through mothers and fathers that boys and girls form masculine and feminine identities. Children should feel as though they are accepted and valued by both the same- and opposite-sex parents. Parents can only provide this integration of personality to their children by actively participating in their upbringing. Without self-acceptance derived from parental acceptance of the child, personality conflicts and social-adjustment disorders often arise, persisting into adulthood.<sup>137</sup>

### **Hopelessness and Inadequacy**

In other ways, too, the alienated child is made to feel hopeless and inadequate:

Inability to cope with such emotionally overwhelming situations often induce feelings of powerlessness, hopelessness, and inadequacy that can spill over into other areas of life. If a child has the desire to enjoy a positive relationship with a target parent and there is ongoing programming and brainwashing, what is the child learning? One lesson is that those who supposedly are there to love and protect the child are not fulfilling those responsibilities and that they are unresponsive to the child’s needs.

Confusion is compounded when these children observe peers with separated or divorced parents who work cooperatively and in a mutually respectful manner in their children’s best interests. [As o]ne nine-year-old enviously asked during a home visit on a custody case, “Why can’t my mom and dad just work things out on the phone like my stepsisters’ parents instead of just yelling at each other and hanging up?”<sup>138</sup>

### **Rigid View of the World**

In order to remain aligned with one parent and to reject the other, the child must believe that one is “pure” and “good” while the other is “evil” and “bad.”<sup>139</sup> Such a rigid view of the world is unrealistic and prevents the child from accepting the good and bad, the pure and evil, within him- or herself.<sup>140</sup> Children must learn to acknowledge, tolerate and integrate “the ‘bad’ parent with the ‘good’ into a more realistic view of each parent (whole object representation) and, at the same time, form a cohesive, integrated sense of the ‘good’ and the ‘bad’ in him- or herself (self-constancy).”<sup>141</sup> This “is made extremely difficult” when the child has been alienated from one of its parents.<sup>142</sup>

When children maintain this kind of rigid separation between good and bad, they are bound to strive for an impossible perfection in themselves and other people. Each failure represents an intolerable fall from grace. This most fundamental failure (i.e., to achieve self- and object constancy) is reflected in the pervasive absence of basic trust that testing reveals in these children. It is not difficult to imagine that these polarized shifts from perfectly good to perfectly bad make trusting oneself or others, from moment to moment, a virtually impossible task.<sup>143</sup>

Although the child seems to function well enough in certain situations, this merely masks the deep psychological, tumultuous issues percolating within them:

It is important to note that some alienated children—although they present as very angry, distraught, and obsessively fixated on the hated parent in the therapist's or evaluator's office—appear to function adequately in other settings removed from the custody battle. They might retain their school performance, might continue to excel in musical or athletic activities, and at least superficially seem reasonably well adjusted. A closer look at their interpersonal relationships, however, often reveals difficulties. Alienated children's black-and-white, often harshly strident views and feelings are usually reflected in dealings with their peers as well as those in authority. However, it is in the rejected parents' home that the child's behavior is severely problematic and disturbed. They might destroy property; act in obnoxious, even bizarre ways; and treat these parents in public with obvious loathing, scorn, and verbal abuse.<sup>144</sup>

### Repression

To cope with their parents' ongoing conflict, children may repress their own emotions.<sup>145</sup> Such repression inhibits the child's capacity to perceive, understand and tolerate his or her own feelings.<sup>146</sup> It also inhibits the child's ability to empathize with the feelings of others. This further inhibits the child's social development and "disrupts the achievement of empathy [which is] the basis for interpersonal morality."<sup>147</sup>

### Parental Dependency

To alleviate the feeling of loss caused by the breakup of the marriage, a parent might cling dependently to the child.<sup>148</sup> The child, sensing the parent's emotional need, might in turn cling to that parent and avoid visitation with the other parent.<sup>149</sup> When the child leaves for visitation, the parent may experience a renewed threat of abandonment by the child.<sup>150</sup> This

provokes "intense anxiety and covert hostility toward the child."<sup>151</sup> "Not surprisingly, these children themselves then become ambivalent about separating [from the custodial parent]. Alternatively, some children . . . react as if the parent's very survival depends on their constant vigilance and caretaking."<sup>152</sup> Neither of these reactions are healthy for the child.<sup>153</sup>

### Secondary Rejection(s)

Years later, when an alienated child ultimately realizes that he or she has been the victim of alienation and brainwashing and has lost out on so many years of joyful experiences that could not be shared with the alienated parent, the child will likely feel anger and alienation towards the programming or brainwashing parent.<sup>154</sup> As the child pulls away from that parent, it experiences a secondary loss from the alienation<sup>155</sup>—the loss of the alienating parent as well.<sup>156</sup>

But that is not the sole extent of the harm to the alienated children. Alienated children are generally also angry with the target parent for "giving up" and not fighting harder to maintain a relationship with them.<sup>157</sup> That is because children attribute greater control and power to their parents.<sup>158</sup>

Because children need to feel protected, they must believe that their parents are omnipotent and powerful.<sup>159</sup> Thus, children believe their alienated parent could break through and see them if only the parent had tried harder.<sup>160</sup> When the parent becomes completely alienated, the child will likely blame him.<sup>161</sup>

Though a child may never actually verbalize these feelings, in the child's "inner, secret world" the child "fervently hopes" that the target parent will "be strong, brave, able to intuit their unspoken secret wishes," and continue to fight to see them until they are successful.<sup>162</sup> Children expect:

that the target will know how to rescue them from the programmer /brainwasher and not give up. Target parents almost always express surprise upon hearing that their children want them to be strong and not submit or back away from litigation. Some of these children may seem overtly allied

with the programmer but covertly wish the programmer's power be toppled. These children are fake conformers who appear to be programmed as a survival technique.

Too many parents retreat from pursuing increased time or joint or primary custody due to the mistaken perception that taking action could damage or permanently effect an already conflicted and confused child. Such parents often censor themselves, recoil, or back off after having been given advice that the cards are stacked against them in a no-win situation. Some parents find their finances depleted and, subsequently, are forced to give up. Others fear that litigation may cause more harm than good. Not having access to a crystal ball, they do not trust the wisdom of the legal system due to "horror stories" they may have collected about parents losing time or custody just seeking modification. And still others are unwilling to legally pursue their children due to apprehension of potentially serious emotional and economic assault to themselves, their remarriage, and/or their new family. The target parent's reaction to the programmer /brainwasher and to the child is clearly a key variable in the success or failure of the programme. 163

### Counter Rejection

As a defensive mechanism, a parent who is rejected by his or her children, will often "counter-reject" the children as well. 164

When rejected parents feel that they are being abusively treated by an alienated child who is refusing all efforts to reconnect, they can become highly affronted and offended by the lack of respect and ingratitude afforded them. Hurt and humiliated, some rejected parents react to the child's alienation with their own rejection. Their anger

might also stem from sheer frustration and lack of patience or might arise from retaliatory needs to treat the child in the same manner in which they have been treated. The counterrejection is felt by the child, and reinforced by the aligned parent, as confirmation of the rejected parent's lack of interest and love, which often leads to intensified condemnation of the "bad" parent. 165

### Guilt

Guilt is another feature "that indelibly colors a child's social-emotional life. Feelings of guilt can emanate from complying with the programme and acting against the target parent." 166

Although they understand the manipulations, most children are not polemically secure enough to successfully deter a brainwashing parent. Unless the parent senses that he or she is losing the child emotionally or through the court's decision to modify custody, he or she will continue to apply pressure on the child. Children who understand and comply with the brainwasher's desires pay the price through developing guilt. They are in conflict because they do not necessarily believe what they are being told. However, they feel compelled to think, feel, or behave in ways that go against their own set of values and will comply nevertheless.

Children may have feelings of guilt . . . for not revealing their true (good) feelings toward a parent; for shunning or rejecting a parent at an event, in public, at pickup time, or when alone with that parent; . . . or for punishing a parent by being verbally or physically abusive. Often, children come to believe the target parent may be angry or hate them due to behavior they know is wrong but they still engage in.

This sense of estrangement propels them deeper into the brainwasher's

camp. This scenario is problematic for such children because, nowhere, can they be true to their hearts. The brainwasher's love and understanding is questionable, and the target parent may have become distanced. A child caught in this bind does not ordinarily possess the skills (or bravery) necessary to confront the brainwasher and to assert himself or herself. Feelings of guilt for having "hurt" the target make it difficult to approach that parent. The target parent may have simultaneously been programmed to believe that the child is rejecting and unloving, so that reaching out is obstructed. The child and target parent become polarized, which was exactly the brainwasher's goal. So, brainwashers can successfully implement and carry to fruition their goals even when a child understands what is transpiring.<sup>167</sup>

Even if the alienated parent has not actually counter-rejected the child, the child usually assumes that the parent has done so.<sup>168</sup> "A child who loses contact with a target parent resulting from pressure or through compliance usually fears that the target parent has become angry. Almost every child with whom [Dr. Clawar has] spoken—those who testified in court or those who did not have the strength or the skills to overcome the programme—believed that the target parent was angry with them beyond reprieve."<sup>169</sup>

### **Confusion**

The fight for the "minds and bodies" of the children throw the children into turmoil and confusion.<sup>170</sup> "Loyalty conflicts are common and usually fraught with confusion."<sup>171</sup> This is especially true when the child is "fed untrue stories about a target parent that runs counter to [the child's own experiences with that parent,—the child's] observational data."<sup>172</sup>

Confusion and anxiety are increased when a child perceives the target parent to be good and loving, but constantly receives the message that the target is bad.<sup>173</sup> The child is further confused by wondering why he or she is not permitted to love both parents freely.<sup>174</sup> Similarly, when a child hears that the parent

claims to permit the child to visit with the other parent, but observes the parent's body language and actions that belie that permission, the child can become "profoundly confused."<sup>175</sup>

The degree of damage ultimately suffered by a child is directly related to "the length of time in which the assault continues unharnessed," in its intensity and severity.<sup>176</sup>

### **Inter-Generational Effect**

Equally distressing as the effects alienation has upon its child-victims is the effect it will likely have upon future generations.<sup>177</sup> Children who are alienated from a parent have a higher likelihood of becoming alienators themselves, thereby perpetuating the negative effects onto future generations as well.<sup>178</sup>

[C]hildren who were raised by a programmer/brainwasher and who were significantly deprived of a target parent may learn to be proprietary and self-righteous rather than to share the children after their own divorces. Further, they are likely to repeat their parents' behaviors and patterns in times of family crises and are resistant to input and change. One possible reason for this behavior is that, as children, these parents repressed their emotional reaction to their own parents' divorce. The past is visited upon the present when repressed feelings of anger, loneliness, resentment, abandonment, and other conflicts are repeated in an attempt to achieve a belated mastery. Repetition compulsions in adulthood often are derivatives of intrapsychic injuries and disappointments experienced in childhood.<sup>179</sup>

### **Conclusion**

The severe effects alienation has upon children should compel judges and lawyers to be ever-vigilant in preventing its continuation. Part Two of this article will explore the treatments that have been effective in dealing with alienation, and the ways in which the courts in New York State have dealt with this issue.

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## Endnotes

1. Although alienation might be employed by either parent, because it is more likely to be employed by mothers than by fathers, [see Clawar & Rivlin, *Id.*, Ch. VII, (*The Female Factor: Why Women Programme More Than Men*)], and because mothers are more likely to obtain custody than fathers (*see Brandes*, 4 *Law and the Family New York* §§ 1:2 and 1:3), for ease of reading, this article will at times refer to the target parent in the masculine gender and the alienating parent in the feminine.
2. *Daghir v. Daghir*, 82 A.D.2d 191, 193 (2d Dep't, 1981), *aff'd*, 56 N.Y.2d 938 (1982).
3. *Id.*, 82 A.D.2d at 195.
4. *Id.*, 82 A.D.2d at 193–195 (citations omitted).
5. Stanley S. Clawar & Brynne V. Rivlin, *Children Held Hostage: Dealing with Programmed and Brainwashed Children*, American Bar Association Section of Family Law (1991), Table 17 at 180.
6. Joel R. Brandes, 4 *Law and the Family, New York, Child Custody* § 1:27 at 121 (2d ed., 1997).
7. *Young v. Young*, 212 A.D.2d 114, 122 (2d Dep't, 1995).
8. Ira Turkat, *Parental Alienation Syndrome: A Review of Critical Issues*, 18 *Journal of the American Academy of Matrimonial Lawyers* 131, 132 (2002), available at <http://www.aaml.org/Journal/18-1/MAT109.pdf>.
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.* Parental alienation as a “syndrome” continues to be a highly controversial topic. *Compare, People v. Fortin*, 289 A.D.2d 590 (2d Dep't 2001) (holding that the defendant in that criminal action did not meet his burden of proving the Syndrome's general acceptance in the scientific community), with *Zafran v. Zafran*, 191 Misc. 2d 60 (Sup Ct., Nassau Co. 2002) (permitting “Frye” hearing to determine admissibility of the Parental Alienation Syndrome theory). This article addresses the phenomena of parental alienation and the harm it inflicts upon children, without taking any position on whether parental alienation is, or can become, a “syndrome.” Any references to a “syndrome” or PAS within this article is merely to integrate the verbatim quotations of other authors.
14. *Id.*, at 133 (footnotes omitted).
15. *J.F. v. L.F.*, 181 Misc. 2d 722 (Fam. Ct., Westchester Co. 1999) (citations and quotations omitted).
16. Janet Johnston, *Rethinking Parental Alienation and Redesigning Parent-Child Access Services for Children Who Resist or Refuse Visitation* (2001) (hereinafter “Rethinking”), available at [www.ifp\\_bayern.de/-cms/BU\\_Johnston.pdf](http://www.ifp_bayern.de/-cms/BU_Johnston.pdf); Joan B. Kelly & Janet R. Johnston, *The Alienated Child, A Reformulation of Parental Alienation Syndrome*, 30 *Family Court Review* 249 (2001) (hereinafter “Reformulation”).
17. *Johnston, Rethinking, Id.* at 1.
18. *Id.* at n.1.
19. *Id.*
20. *Id.* at 1.
21. *Johnston, Rethinking, Id.* at 3; *Kelly & Johnston, Reformulation, Id.* at 251.
22. *Johnston, Rethinking, Id.* at 4; *Kelly & Johnston, Reformulation, Id.* at 254.
23. *Kelly & Johnston, Reformulation, Id.* at 255.
24. *Id.*
25. *Clawar & Rivlin, Id.* at 15.
26. *Clawar & Rivlin, Id.* at 15.
27. *Id.*
28. *Clawar & Rivlin, Id.* at 16.
29. *Id.*
30. *Id.*
31. *Clawar & Rivlin, Id.* at 16.
32. *Clawar & Rivlin, Id.* at 16–17.
33. *Id.*
34. *Id.*
35. *Id.*
36. *Id.* at 17.
37. *Id.* at 17–18.
38. *Id.*
39. *Id.* at 18–19.
40. *Id.*
41. *Id.* at 20.
42. *Id.*
43. *Id.* at 21.
44. Elizabeth M. Ellis, *Divorce Wars, Interventions with Families in Conflict*, American Psychological Association 224 (2000) (quoting Cartwright) (emphasis added).
45. *Clawar & Rivlin, Id.* at 24–25.
46. *Id.* at 21–22 (emphasis in original).
47. *Id.* at 24.
48. *Id.* at 24–25.
49. Janet Johnston & Vivienne Roseby, *In the Name of the Child, A Developmental Approach to Understanding and Helping Children of Conflicted and Violent Divorce*, at 47 (The Free Press, 1997).
50. *Johnston & Roseby, Id.* at 48.
51. Michael R. Walsh & J. Michael Bone, *Parental Alienation Syndrome: An Age-old Custody Problem*, 71 *Fla. Bar J.* 93 (1997).
52. *Id.*
53. *Johnston, Rethinking, Id.* at 5.
54. *Id.*
55. *Id.*
56. *Id.*



57. Kelly & Johnston, *Reformulation, Id.* at 258.
58. Johnston & Roseby, *Name of the Child, Id.* at 50.
59. Johnston & Roseby, *Id.* at 50.
60. *Id.*
61. *Id.*
62. Clawar & Rivlin, *Id.* at 75 & 26.
63. Johnston & Roseby, *Name of the Child, Id.* at 50.
64. *Id.*
65. *Id.* at 60.
66. *Id.*
67. *Id.*
68. Kelly & Johnston, *Reformulation, Id.* at 257 (emphasis added).
69. Turkat, *Id.* at 138.
70. Johnston, *Rethinking, Id.* at 10.
71. Johnston, *Rethinking,* at 10–11.
72. Kelly & Johnston, *Reformulation, Id.* at 261.
73. *Id.*
74. *Id.*
75. *Id.*
76. Kelly & Johnston, *Reformulation, Id.* at 262; Clawar & Rivlin, *Id.* at 74–75.
77. Kelly & Johnston, *Reformulation, Id.* at 257.
78. Clawar & Rivlin, *Id.* at 74.
79. *Id.* at 80.
80. *Id.*
81. *Id.*
82. *Id.* at 84.
83. *Id.*
84. Kelly & Johnston, *Reformulation, Id.* at 258.
85. *Id.*
86. Ellis, *Id.* at 220.
87. *Id.*
88. Johnston, *Rethinking, Id.* at 1; Turkat, *Id.* at 134.
89. Walsh & Bone, *Id.*
90. *Id.*
91. Clawar & Rivlin, *Id.* at 70.
92. *Id.* at 71.
93. *Id.* at 72.
94. *Id.* at 72.
95. *Id.* at 72–73.
96. *Id.* at 75–76.
97. *Id.* at 76.
98. *Id.* at 92.
99. *Id.* at 84.
100. *Id.* at 76.
101. *Id.*
102. *Id.* at 78.
103. *Id.* at 74 & 104.
104. *Id.* at 104 (citing John Bowlby, *Separation, Anxiety and Anger*); Johnston & Roseby, *Name of the Child, Id.* at 68–69.
105. Clawar & Rivlin, *Id.*
106. Ellis, *Id.* at 226.
107. Kelly & Johnston, *Reformulation, Id.* n.1 at 264 (citing eight different studies on the subject).
108. *Id.*
109. Kelly & Johnston, *Reformulation, Id.* at 256.
110. Clawar & Rivlin, *Id.* at 107.
111. *Id.* at 105.
112. *Id.* at 129, 105–28.
113. *Id.* at 94.
114. *Id.* at 113.
115. Walsh & Bone, *Id.*
116. *Id.*
117. *Id.*
118. *Id.*
119. Johnston & Roseby, *Name of the Child, Id.* at 54.
120. *Id.*
121. *Id.* at 54–55.
122. *Id.*
123. Johnston & Roseby, *Id.* at 55–56.
124. *Id.* at 56.
125. Clawar & Rivlin, *Id.* at 112.
126. *Id.* at 113–14.
127. Johnston & Roseby, *Name of the Child, Id.* at 55.
128. *Id.* at 56.
129. *Id.*
130. *Id.*
131. *Id.* at 56–57.
132. Clawar & Rivlin, *Id.* at 111.
133. *Id.*
134. *Id.*
135. *Id.*
136. *Id.*
137. *Id.*
138. *Id.* at 114.
139. Johnston & Roseby, *Id.* at 56–57.
140. *Id.*
141. *Id.*
142. *Id.*
143. *Id.* at 57.
144. Kelly & Johnston, *Reformulation, Id.* at 263.
145. Johnston & Roseby, *Name of the Child, Id.* at 67.
146. *Id.*
147. *Id.*
148. *Id.* at 51.
149. *Id.*
150. *Id.*
151. *Id.* at 52.
152. *Id.*
153. *Id.*
154. Clawar & Rivlin, *Id.* at 105.
155. *Id.*
156. *Id.* at 105–06.
157. *Id.* at 112.
158. *Id.*
159. *Id.*
160. *Id.*
161. *Id.*
162. *Id.*
163. *Id.*

164. *Kelly & Johnston, Reformulation, Id.* at 259.
165. *Id.*
166. *Clawar & Rivlin, Id.* at 106.
167. *Id.* at 84–85.
168. *Id.* at 106.
169. *Id.*
170. *Id.* at 107.
171. *Id.*
172. *Id.*
173. *Id.*
174. *Id.* at 112–13.
175. *Johnston & Roseby, Id.* at .
176. *Clawar & Rivlin, Id.* at 104; nn. 21, 22, 106 & 107, *Id.*
177. *Clawar & Rivlin, Id.* at 114–15.
178. *Id.* at 115.
179. *Id.* at 115 (citing Otto Fenichel, *The Psychoanalytic Theory of Neurosis* (New York: W.W. Norton & Co., 1945) at 540 and 405).

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### FATHER? WHAT FATHER?<sup>1</sup> PARENTAL ALIENATION AND ITS EFFECT ON CHILDREN

*Part Two*<sup>2</sup>

By Chaim Steinberger<sup>3</sup>

Part One of this article distinguishes alienation from estrangement.<sup>4</sup> Estrangement occurs when children cease having contact with a parent for justifiable reasons. Alienation is said to have occurred when the children's purported reasons does not justify the cessation of contact with the parent. Part One outlines some of the many insidious methods employed by alienating parents. It details how those parents drive a wedge between their children and the "target" parent until the children themselves continue to find fault (real or imagined) with the target parent. From that point onward the alienating parent need do no more. She has started the snowball rolling down the mountain and, thereafter, it continues to roll down forcefully under its own momentum with no further action on her part. The children have now become "corroborators"<sup>5</sup> to the alienation and, thereafter, will continue the "programme" themselves and independently resist reconciliation with the target.

Part One describes some of the common symptoms of alienated children. They often view one parent as a "saint" and the other as a "sinner,"<sup>6</sup> can often remember nothing good about their target parents, have an adversity to them that is disproportionate to their experiences with them, and are overly rigid in viewing their relationships to them. In addition, they often have distorted beliefs of reality, believing that their fathers do not love them and are fighting to see them merely to cause trouble for them and their mothers.<sup>7</sup> They may also reject, not only the target, but the target's extended

family as well. Part One lists the catastrophic long-term ill effects that will likely afflict children who unjustifiably reject one of their parents.

This part of the article will detail the studies that have shown that alienating behavior occurs regularly in eighty percent of divorcing parents. It outlines the interventions and treatments that have proven to be effective for remedying alienation and reversing its process. Finally, it discusses how the courts of the State of New York view this issue and points out the responsibility the courts bear to remedy the harm, particularly since it is usually the courts' initial grant of authority to the alienating parent that has made the alienation possible.

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## **Law Guardian Reporter**

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### **How Often and When Alienation Occurs:**

In response to the apparent increase of parental alienation,<sup>8</sup> the Family Law Section of the American Bar Association commissioned a long range study of divorcing parents<sup>9</sup>. The study spanned more than twelve years and included more than a thousand divorcing couples.<sup>10</sup> It found that alienating behavior was employed by parents on a recurring basis in sixty percent (60%) of all divorce cases, and sporadically in another twenty percent (20%).<sup>11</sup> In only 20% of divorces did neither parent denigrate the other.<sup>12</sup>

Alienation is more likely to occur when a parent (i) harbors intense or abiding distrust of the other parent; (ii) is convinced that the other parent is irrelevant or a pernicious or dangerous influence to the child; or (iii) believes that the other parent has never loved or cared about the child.<sup>13</sup> The alienating parent, therefore, believes that the child is in "urgent" need of "protection from the [target] parent."<sup>14</sup> Alienation commonly occurs when there is a history of intense marital conflict, or when a child has been "triangulated" between warring parents.<sup>15</sup> It can occur when a child is used by the alienating parent to replace the target as the central object of her affection, and frequently occurs when a parent experiences a separation or divorce as inordinately humiliating.<sup>16</sup>

Children who are "temperamentally vulnerable (anxious, fearful, dependent, or emotionally troubled)" are generally less able to withstand the inordinate stress of being placed in the middle of a high conflict divorce.<sup>17</sup> They are, therefore, "more likely to be drawn into an alienated stance." Pre-adolescent and adolescent children 8-15 years old can be easily alienated because "they can maintain a consistent

stance of anger and are more likely to make rigid moral judgments of a parent."<sup>18</sup> Younger children, in contrast, can rarely be "as fully and consistently alienated unless they have older siblings whom they emulate or who keep them under strict partisan control."<sup>19</sup>

### **Parental Alienation Is A Form of Child Abuse:**

A child whose parent has been excluded from its life will not feel closer or yearn more strongly for him. Rather the child will forget about the parent or learn to disdain him. "Absence [in this situation] does not make the heart grow fonder; [rather] unfamiliarity breeds contempt."<sup>20</sup>

Moreover, parents' divorce, to their children, is a "chilling lesson" about the fleeting and impermanent nature of love.<sup>21</sup> Children, therefore, feel anxious and vulnerable at such a time and are especially in need of unconditional love and devotion.<sup>22</sup> A parent who closes off the "avenues of love and support" available from the target is, therefore, being particularly cruel and selfish.<sup>23</sup> But when parents "manipulate the[ir] children into erecting [] barriers themselves, when they enlist the[ir children] as agents in their own deprivation, they violate their children's trust in a most cruel manner. If is a form of kidnap[ing]; [a] stealing [of their] soul[s]."<sup>24</sup> Mental health professionals, and appropriately the Courts too, have, therefore, recognized that parental alienation is a form of child cruelty and abuse.<sup>25</sup> Indeed, the Second Department, in a custody and neglect case, affirmed a finding that the mother "emotionally neglected" her child by alienating the child from the father.<sup>26</sup>

### **The Need for an Experienced Forensic Evaluator:**

There are few reasons that justify a child's estrangement from its parent. Children who are alienated, nevertheless, assert a multitude of reasons which, they claim, justify their desire not to see their target parent.<sup>27</sup> To determine whether the reasons truly justify the estrangement or are merely pretextual to conceal the alienation, a skilled investigator must catalog and test each reason. The investigator must also probe for additional reasons, including those that the children deny, to determine whether they play any role in the children's estrangement. The investigator must understand all of the dynamics at issue in the situation, and accord to each real and claimed reason an appropriate weight.<sup>28</sup> Only by reviewing all of the reasons in the context of their weighted significance

can it be determined whether the situation is one of estrangement or alienation.

An investigator who is not skilled in recognizing alienation or one who is not familiar with the dynamics and reasons for alienation occurring, may not recognize its symptoms or probe deeply enough in undisclosed, but critical, areas. As a result of an inadequate investigation, the investigator may conclude that there is no alienation even where it actually exists. Only an investigator that is skilled in this area has the knowledge to perform the type of comprehensive investigation that is needed in alienation cases. As the Second Department stated in a different context, "in a case that raises unusual questions . . . there [must] be evidence derived from an independent specialist with appropriate expertise" (emphasis added).<sup>29</sup> Indeed, the Second Department applied this principle to reverse a trial court that denied a noncustodial parent visitation without obtaining an independent forensic report.<sup>30</sup>

Similarly, in *Giraldo v. Giraldo*,<sup>31</sup> a case which contained, *inter alia*, an allegation of alienation, the First Department reversed a Family Court for failing to obtain a forensic evaluation. *Giraldo* involved a mother who fled to the United States from her allegedly violent husband in Colombia, South America. The father then sued for custody. On the second day of the hearing the mother asked the court to appoint a forensic evaluator. The court, noting that a forensic evaluation would delay the trial by six weeks, denied the request as untimely.<sup>32</sup> The Appellate Division, however, reversed. It held that, "once it became evident that [the trial court's] decision would turn upon . . . an evaluation of the parties" and their children, "failing to order independent psychiatric and psychological testing" was an "abuse of discretion."<sup>33</sup> The important and "critical" questions raised in these matters, the court held, should not be decided on limited evidence, when additional evidence could be obtained in short order. The court emphasized that the trial court's finding that the oldest child was "brainwashed" made the need for an independent opinion even more indispensable. "Although these examinations might have taken six weeks or more, the custody issue was of such critical importance as to warrant a continuance of that length."<sup>34</sup>

The trial court in *Zafran v. Zafran*<sup>35</sup> properly applied these principles. There the court noted that in cases in which alienation has been charged, "the court has the duty to become aware of and seek out every bit of

relevant evidence and advice on the custody issues before it."<sup>36</sup> Expert testimony, the court held, "could potentially serve as a 'helpful tool'" when determining difficult custody disputes.<sup>37</sup> *But, see, Fallon v. Fallon*<sup>38</sup> (affirming Family Court's denial of forensic evaluation and its transfer of custody).

### **Effective Treatment for Alienation:**

Traditional or "regular" therapy, unfortunately, is generally ineffective to treat parental alienation.<sup>39</sup> Moreover, traditional therapy may aggravate the alienation and its attendant harms.<sup>40</sup> This type of therapy is usually designed to help people "get in touch" with their feelings. It does not generally deal with, and is therefore ineffective to counteract, the social-interaction issues and programming messages inculcated in alienated children.<sup>41</sup>

Alienated children suffer from distorted perceptions and images of their targeted parent. These distortions cause them to feel hatred and animosity towards the target. Their hatred and animosity, though unfounded, are genuinely held. As a result, exploring their feelings will likely not dissipate the hatred and animosity and, more likely, will only amplify and exacerbate them. It is only by identifying, unraveling and then finally challenging the distortions and beliefs that underlie their feelings, that the children can begin to open their hearts and minds to the possibility of a relationship with the target. Requiring them to spend large quantities of time with the parent, then enables them to see him as the caring, loving parent he often is.<sup>42</sup>

Unfortunately, alienated children and the parent with whom they are "aligned" will resist every such effort to have the children spend time with the target.<sup>43</sup> They will likely "view [any] intrusion[] on their belief system as evidence that others are out to harm them."<sup>44</sup> The alienating parent will, usually, marshal all of her resources to prevent the children from spending this much-needed time with the target parent. By arranging activities and other events, all of which are "more important" than spending time with the target, the alienating parent prevents any rapprochement.<sup>45</sup>

As time marches on with little or no contact between the children and the target, and as the inexorable litigation continues through its mediation, negotiation, psychological evaluations, and ensuing therapy phases, the alienating parent and child perceive it as covert approval of their programme, further entrenching their

position against the target.<sup>46</sup> “[W]ith th[is] passage of time, the child grows to be a staunch corroborator” of the alienating parent’s programme.<sup>47</sup>

In these instances, a judicial wish to maintain the status quo in the life of the child pending the outcome of a determination of [alienation] will only cause that minor to drift further away from the nonresident parent. Additionally, referrals to mediation or the use of attorney-client negotiations are often futile because implicit in these processes is a lack of a swift directive that is often perceived by the alienator as denoting approval of his or her behavior.<sup>48</sup>

Thus, traditional therapy that permits the children to determine where, when, how often and for how long they will see their target parents further empowers them and permits them to continue the alienation.<sup>49</sup> It usually results in continuing the reduced contact with the target and the entrenchment of the children’s distorted beliefs.

Mental health professionals agree that to prevent the alienation and its resulting injuries from becoming permanent, swift decisive action by the courts is necessary.<sup>50</sup> If the alienation is permitted to continue, the “destructive dynamic” becomes “entrench[ed]” and the children’s positions solidified.<sup>51</sup> Appropriate contact between the target parent and the child must be reestablished quickly because delays only “consolidate and reward the child’s phobic or recalcitrant stance.”<sup>52</sup> Unfortunately, all too often, courts are reluctant to take the required action until a child has deteriorated to a dangerous level.<sup>53</sup>

Moreover, because alienation can be subtle and insidious and its devastating effects potentially permanent and irreversible, most experts conclude that in severe instances the only “treatment” that prevents alienation from continuing, effectively reverses it and enables reconciliation with the target is the immediate transfer of custody to the target parent.<sup>54</sup> In every one of the reported studies of parental alienation, interventions that did not include a transfer of custody did not improve the target parent-child relationship while the transfer of custody almost always did.<sup>55</sup> The hundreds of children that were transferred and later interviewed, expressed gratitude and relief that they were compelled to see and be with their parents and get

to know them.<sup>56</sup> When therapy was instituted without a change of custody, however, the alienation often became more severe and the situation deteriorated.<sup>57</sup>

As can be imagined, treatment for something as complicated as alienation is itself complicated. Dr. Clawar, in his authoritative work, describes a fourteen step regimen that must be carefully followed in sequence for treatment to be successful.<sup>58</sup> Moreover, a mental health professional (*hereinafter*, for convenience, referred to as the “therapist”) who wishes to attempt to reconcile a target parent with the alienated child must possess skills in addition to, and more finely honed than, those required for general therapeutic interventions.

It is imperative that the therapist, in the early stages of the treatment, establish rapport with the child.<sup>59</sup> The success of the reconciliation program will largely be dependent upon the therapist’s ability to establish this rapport.<sup>60</sup> Establishing rapport in this situation, however, is particularly difficult since the therapist must also elicit information about the child’s distorted beliefs. Questions that evince disbelief or implies judgment will prevent the rapport from occurring and, more likely, will result in the child “shutting down” and resisting the therapy. This is particularly true since alienated children already hold an “us” against “them” mentality and likely view any appointed therapist as challenging the alliance between the child and the alienating parent. The therapist must, therefore, tread carefully.<sup>61</sup>

In addition, the therapist must be intimately familiar with the parties’ history, the different forms and methods of alienation, and the means utilized in this particular situation.<sup>62</sup> All this is necessary in order to know what avenues to explore or pursue.<sup>63</sup> The therapist must be experienced in dealing with alienation and, thereby, be capable of tailoring a plan of action specifically for this family.<sup>64</sup>

Generally, to effect a reconciliation or reversal of the alienation, the therapist must:

1. Investigate, identify and itemize the themes, claims and beliefs of the child which the child claims makes him or her dislike the target.<sup>65</sup> This may be fear (“Daddy will take us away from Mommy”), immorality (“Mommy is bad because she cheated on daddy”) or rejection (“Daddy hates us”);

2. Investigate and identify the techniques used to transmit or inculcate the themes to the child.<sup>66</sup> This may be done by questioning the child in a non-judgmental manner about how he came to have the claimed knowledge, or by responding to strong emotions by saying "That seems to be a strong feeling for you. How does a feeling like that come about?";<sup>67</sup>
3. Identify the duration and intensity of the alienation;<sup>68</sup>
4. Attempt to obtain the motives of the programmer.<sup>69</sup> This may include revenge, self righteousness, fear of losing the child, continuation of pre-divorce denigration of the target, feelings of ownership over the child, jealousy, desire for child support, loss of identity that would occur if the child left, rendering the target nonexistent by excluding him, self protection (if the alienating parent fears revelation of her shortcomings or illegal activities), attempts to maintain the relationship with the target through conflict, or the exercise of power, control or domination over the child or target. Knowledge of the motives helps develop a tailored treatment plan. Interestingly enough, in about fifty percent of the cases the alienated children were themselves aware of their alienating parents' motivations in programming them;<sup>70</sup>
5. Evaluate the degree and types of damage that have occurred or will likely result to the child if the alienation continues. This must be identified to develop a timely plan of action;<sup>71</sup>
6. Evaluate the resources available for the reconciliation, including any grandparents, religious or educational figures that might be useful in the process;<sup>72</sup>
7. Identify the risks of attempting reconciliation.<sup>73</sup> The alienating parent may intensify her efforts to alienate the child, and the child may suffer from confusion, loyalty conflicts, depression or social isolation.<sup>74</sup> She may also withdraw the child from the therapeutic setting or resist its effects.<sup>75</sup> Though intervention usually entails some "short-term consequences" to the children, "[i]t is usually more damaging socially, psychologically, educationally and/or physically for children to maintain beliefs, values, thoughts and behaviors that disconnect them from one of their parents . . . compared to getting rid of the[ir] distortions or false statements."<sup>76</sup>
8. Identify and prepare for any "shut down" messages implanted within the child's mind.<sup>77</sup> For example, the child may have been told not to believe any contrary messages presented to him or her, that "all outsiders [therapists, judges, attorneys or others intervening] are bad," or to refrain from talking about certain issues.<sup>78</sup>
9. Determine whether the inculcation has been so intense and enduring, that reconciliation is futile.<sup>79</sup> Care, however, must be taken that hope not be give up too soon. Except in the most extreme cases alienation can be achieved by either therapy or, in more extreme cases, the transfer of custody from the alienating parent to the target parent;<sup>80</sup>
10. Set goals, and prepare for, the therapeutic part of the reconciliation program;<sup>81</sup>
11. Begin actively intervening in the alienation and continue to solidify the rapport, by exploring and testing the child's discomfort or grief at the current situation. This could be done by asking non-judgmental probing questions such as, "Wouldn't it be nice if you were able to have a good relationship with your dad?";
12. Prepare and introduce objective facts that challenge or question the child's distortions of reality.<sup>82</sup> This may be done by asking questions such as, "Why do you think your father's going to court is evidence that he hates you?" This can be done successfully only by following a careful sequence that begins by accepting the child's starting position, and then asking for an explanation of that position and why the child holds it. That then can be followed by separating the child's feelings from those of others and then carefully raising contradictory questions ("Dad's motives are only to see you. Is that the same as 'hatred'?") which then creates an emotional connection between the child and the target, and cognitive

dissonance with the child's claimed beliefs,<sup>83</sup>

13. At the same time as the foregoing steps, facilitate the reconciliation and prevent further programming by greatly increasing the time spent with the target parent and limiting or eliminating the time spent with the alienating parent.<sup>84</sup> Significant additional contact with the target parent, even when it was court-ordered over the objections of the children, greatly improved the relationship between the target and children in ninety-percent (90%) of the cases studied.<sup>85</sup> Conversely, slow "phase in" of additional visitations were usually counter-productive,<sup>86</sup> in part because the alienated children, fully aware that their behavior was being monitored and would determine future visitations with the target, acted out and misbehaved to undermine the reconciliation efforts.<sup>87</sup> Though there is some difference of opinion on this issue, "every published study . . . has reached the same conclusion: If a child's alienation is unjustified, the most reliable path to recovery is to get the child together with the target parent."<sup>88</sup> Moreover, "[m]any alienated children require more [than a day visit] to emerge from the shadow of the alienating parent and respond positively to the target."<sup>89</sup> In older children, it may take as long as a full month for the alienated child to "thaw" out and begin to be receptive to the love and attention shown by the target.<sup>90</sup> This can only be accomplished by moving the child into the target parent's home.<sup>91</sup> If that is dangerous (because of threats to self or others) the child can be moved to some more neutral location such as a friend's home, a member of the target's family or other residential facility, so long as it is away from the alienating parent and her ability to transmit messages to the child.<sup>92</sup>

14. Reeducation, counseling and therapy for the alienating parent, if the alienation was inadvertent, to teach her the harmful effects of the alienation,<sup>93</sup> and for the child and target parent, to teach new ways of communicating with each other and to overcome the hurt and emotional strain of the period of alienation. This therapy, however, is far different from "traditional" or "regular" therapy.<sup>94</sup> Here, the

children learn to think for themselves and to themselves judge the accuracy of each parent's allegations against the other.<sup>95</sup> They are taught that they do not have to hate one parent just to please the other, and learn skills to deal with and handle the unfair characterizations of an alienating parent.<sup>96</sup> Children might also be reminded that their cruelty toward the target would never have been tolerated by either parent when they were together.<sup>97</sup> Even when this kind of therapy does not bear immediate results, it oftentimes plants seeds that later affect the children dramatically.<sup>98</sup>

#### **Alienation Cases in New York:**

New York courts have long recognized the inviolate nature of visitation with the non-custodial parent. Visitation is "a joint right of both the noncustodial parent and the child,"<sup>99</sup> because "the best interests of [each] child [is] furthered by being nurtured and guided by both of [its] natural parents."<sup>100</sup> The Court of Appeals recognizes that the natural right of visitation "is more precious than any property right."<sup>101</sup> Thus, "[a] noncustodial parent should have reasonable rights of visitation, and [those rights can only be abridged] upon substantial evidence that visitation would be detrimental to the welfare of the child."<sup>102</sup> Even a court may not deny visitation without first conducting an expert forensic evaluation with expertise in the relevant issues and holding a hearing.<sup>103</sup>

"One of the primary responsibilities of [the] custodial parent is to assure the meaningful contact between the children and the other parent."<sup>104</sup> "[T]he willingness of a parent to assure such meaningful contact . . . is a factor [that must] be considered in making a custody determination."<sup>105</sup> "[A] custodial parent's interference with the relationship between a child and [the] noncustodial parent [is] 'an act so inconsistent with the best interests of the child as to per se raise a strong probability that the offending party is unfit to act as a custodial parent.'"<sup>106</sup> Interference with visitation, therefore, is a sufficient reason to change custody away from the heretofore custodial parent.<sup>107</sup>

The Appellate Division, Second Department has recognized the detrimental and insidious effect of alienation.<sup>108</sup> In *Young v. Young*, it recognized that "the psychological poisoning of a young person's mind to turn him or her away from the noncustodial parent" has "the potential for greater and more permanent



damage to the emotional psyche” of the child than merely denying access to the child.<sup>109</sup>

*Young* involved four children who ranged in age from 7 to 12. Their mother interfered with the father’s visitation by “frequently ma[king] other plans or arrangements for the children on the dates and times that the father was to have visitation” and by making several false allegations of sexual abuse.<sup>110</sup> The father moved for a change of custody but the Supreme Court denied his motion. The Second Department, however, reversed. The Appellate Division found that “[t]he mother’s testimony was devoid of any understanding or recognition of why it is important for her children to have a relationship with their father.”<sup>111</sup> “[I]f left with their mother,” the Appellate Division found, “the children would have no relationship with their father given the mother’s constant and consistent single-minded teaching of the children that their father is dangerous. She has demonstrated that she is unable and unwilling to support the father’s visitation; and it was, therefore, an improvident exercise of discretion to deny the father’s petition for a change of custody.”<sup>112</sup> This holding is consistent with many others of the Second Department.<sup>113</sup>

The First Department too, in *Renee B. v. Michael B.*,<sup>114</sup> reversed a Family Court that refused to transfer custody from the mother to the father. “It has been shown that [the mother] attempts to exclude [the father] from the child’s life. The Clinical Director and the psychiatrist who met with all concerned believe that, if awarded custody, she will continue to do so. Such acts are `so inconsistent with the best interests of the children as to, per se, raise a strong probability that the mother is unfit to act as custodial parent.”<sup>115</sup>

*R.B. v. S.B.*<sup>116</sup> involved a father who had strong relationship with his son until the commencement of the divorce action. Thereafter the mother embarked on a “vindictive and relentless” “crusade” to alienate the child from his father. She told the father, in the son’s presence, that he would never see his son again without her present, “because all you do is lie. And my son will not be subjected to a liar and a cheat and a thief and embezzler.” She told the father that she wanted the son to hate his “f— guts.” Needless to say, the son stopped speaking to his father for nearly four years. In one letter, he told his father that:

I would see you if you did things better. Like paying for bar mitzvah

pictures. Or getting Mom a lawyer (in case you forgot, you have three). I’d be glad to see you if you paid bills and stuff like that. I miss playing sports with you, really. Like I’ve said I would see you if you acted like an honorable parent.

Justice Silberman, presiding over that case, noted that, “Obviously, problems regarding lawyers, bills and payment for bar mitzvah pictures is not the usual domain of a fourteen year old boy. Once again, the court is left to conclude that [the mother] was fueling acrimony between [the son and father] in order to further her own agenda.” She found that the mother had “permanently damaged [the father’s] relationship” with the son.

The court, however, denied the father’s application to deem his son constructively emancipated and, therefore, no longer entitled to support. “[I]t was not [the son’s] free choice to reject the love and guidance of his father. The evidence clearly established that [the son] was a hostage in [his mother’s] war against [his father]. Time and again he was fed inflammatory and hurtful information regarding adult issues in [his mother’s] attempt to retaliate against [the father] for leaving the marriage.” Therefore, the court held, it would be inappropriate to punish the child by cutting off his support.

The mother, however, was not entitled to such favorable treatment. Though long accustomed to a lavish lifestyle, Justice Silberman held that it was inappropriate to require the father to continue paying a high level of support and maintenance while his son refused to see him. She reduced the mother’s maintenance from her “prior standard of living” to just enough to meet her “reasonabl[e] needs to meet her daily living expenses.” Justice Silberman then warned the mother that she would “entertain a motion by [the father] to decrease or terminate child support upon establishing that [the seventeen year old] is not complying with the ordered visitation schedule.”

In *Zafran v. Zafran*<sup>117</sup> (*Zafran I*) the mother accused the father of alienating the children against her. Justice Ross cited to one of Justice Silberman’s decisions in which she noted that parental alienation “has become increasingly prevalent in troubled marriages.”<sup>118</sup> He noted that courts have been sensitive to parental alienation though they have not formally adopted it as

a "syndrome"<sup>119</sup>:

New York courts appear to have embraced the concept of parental alienation in custody/visitation cases, but have not yet recognized the theory through expert opinion evidence. Generally, the New York Courts, in the context of a custody/visitation case, rather than discussing the acceptability of 'PAS' [parental alienation syndrome] as a theory, have discussed the issue in terms of whether the child has been programmed to disfavor the non-custodial parent, thus warranting a change in custody.<sup>120</sup>

The court noted that in cases in which alienation is charged, "the court has [a] duty to become aware of and seek out every bit of relevant evidence and advice on the custody issues before it, and such expert testimony could potentially serve as a 'helpful tool' in determining [] difficult custody dispute[s]."<sup>121</sup> Accordingly, the Court directed the parties to proceed to a *Frye* hearing on parental alienation syndrome.<sup>122</sup>

At the conclusion of the trial (*Zafran II*), the court found that alienation had in fact occurred.<sup>123</sup> The court noted that while the mother "endured" the alienation, "the emotional abuse only escalated and this seemingly interminable litigation lingered on."<sup>124</sup> The court characterized the proceedings as "custody litigation purgatory."<sup>125</sup> The alienation of a parent, the court noted, "is a struggle that no parent should endure and one which this Court felt compelled to act upon."<sup>126</sup> The court permitted custody of the two older children to remain with the father, and of the younger child to remain with the mother, but directed that all of the parties and children attend a psychologist who was appointed to serve as case manager and family therapist for the family. The court hoped that this scheme would stop the alienation and warned that noncompliance with its directives would result in a referral to the county attorney for possible commencement of neglect proceedings. Justice Ross was affirmed on appeal.<sup>127</sup>

In *J.F. v. L.F.*<sup>128</sup> the court transferred custody from the mother to the father because of the mother's alienation of the children:

The animosity that the mother, the physical "custodial" parent has long

harbored for the father has not lessened with time. As predicted by the mental health professionals at the inception of these matters, the mother has succeeded in causing parental alienation of the children from their father, such that they wish no longer to have frequent and regular visitation or anything much else to do with him. Given this parental interference, the issue before this court is whether it is in the best interests of the subject children, now 11 and 13 years of age, to modify the custody order and to grant the father sole custody. Ultimately, with much deliberation, this court has determined that the long-term emotional best interests of these children mandate a change of custody to the father.<sup>129</sup>

The court noticed that the children exhibited the saint/sinner dichotomy, one of the strongest indicators of alienation, by the fact that the children viewed that their mother as all perfect and their father all evil.

The loving way in which the children perceive their mother, and the way in which they uncritically describe her as being perfect, stands in stark contrast to their descriptions of their father. Their opinions about their father are unrealistic, misshapen and cruel. They speak about and to him in a way which seems, at times, to be malicious in its quality. Nothing in the father's behavior warranted that treatment. The psychiatrists testified that the children are aligned in an unhealthy manner with the mother and her family. This is evidenced not only in the testimony of the father but also in the in camera interview. They repeatedly refer to the mother's family as "my family," but they do not refer to the father or his family that way. Both children used identical language in dismissing the happy times they spent with their father as evidenced in the videotape and picture album as "Kodak moments." They deny anything positive in their relationship

with their father to an unnatural extreme.<sup>130</sup>

The mother protested her innocence, claiming that she encouraged the children to have a good relationship with their father and that it was the father's "lack of concern, inattention, insensitivity and poor parenting that resulted in the current position of the children."<sup>131</sup> The court, however, rejected her argument. The "custodial parent has a duty to protect and to nurture the child's relationship with the noncustodial parent, and to ensure access by the noncustodial parent."<sup>132</sup> The court found that the mother there "psychologically poisoned [the minds of the children] despite her love and devotion to them."<sup>133</sup> "After having done the damage, she cannot now sit back and pretend that none of this is of her making."<sup>134</sup> Despite the children's refusal to see their father, the court held that it was in their best interest to be compelled to do so:

In the instant case, the children do not want to visit with their father. With the passage of time, these children have become "staunch corroborators" of their mother's ill opinion of the father. They call their father names, they make fun of his personal appearance, they treat him as though he were incompetent, and they speak of and treat his wife similarly. Yet the research on the effects of separation and divorce, as reflected in the case law, indicates that children are healthier when they maintain a close relationship with both parents, and that the loss of one parent is detrimental to the child. (*See, Young v Young*, 212 AD2d 114, 115, *supra*.) Even though the children have expressed a preference for living with their mother, while it is a factor to be considered, it is not determinative.<sup>135</sup>

Fortunately for the children there, the court noted, "[t]he father . . . continued to keep fighting to have access to his children over the years, despite the clear attempts on the part of the mother to undermine his relationship with them."<sup>136</sup> Thus, despite the law guardian's opposition to a transfer of custody, and after "consider[ing] at length less drastic approaches," the court concluded that the only effective intervention would be a change of custody:

In the instant matter, as in *Young* . . . if the children were to be left with the mother the children would have no relationship with their father given the mother's constant and consistent single-minded teaching of the children that their father is dangerous. She has demonstrated that she is unable and unwilling to support the father's visitation.<sup>137</sup>

\* \* \*

The court acts with a weighty awareness of the gravity of its decision. The court has considered at length less drastic approaches, such as granting the father summer visitation and ordering immediate therapy for the children and parties. The court has concluded that such remedies would be ineffective. Although the children may be upset, angry and disappointed and may grieve, the court has faith that in the long run, the children's resiliency, lust for life and underlying goodness and purity will bring them to a place where they can love and be loved by both parents. To this end, the court directs that the children be in therapy with an appropriate therapist with experience in parental alienation and that the parents cooperate in such therapy.<sup>138</sup>

Accordingly, the court transferred custody to the father and cut off all contact between the children and the mother until the children's therapist "familiar with and experienced in treating cases involving parental interference," thought it appropriate.<sup>139</sup> The Appellate Division, Second Department, affirmed this decision.<sup>140</sup>

Similarly, in *Karen B. v. Clyde M.*<sup>141</sup> the court transferred custody from the mother and awarded it to the father because of the mother's alienation. The court held that any parent who would abuse her children for so foul a purpose was not fit to continue as their custodian. In that case:

the mother programmed her daughter to accuse the father of sexually abusing the child so that she could obtain sole custody and control or even preclude any contact that the

father might have with his daughter.

In the opinion of this Court, any parent that would denigrate the other by casting the false aspersion of child sex abuse and involving the child as an instrument to achieve his or her selfish purpose is not fit to continue in the role of a parent.<sup>142</sup>

Accordingly, the court removed the child from the mother and awarded custody to the father. Its decision was affirmed by the Appellate Division.<sup>143</sup>

In *Vernon v. Vernon*<sup>144</sup> the Appellate Division and then the Court of Appeals affirmed Justice Silbermann who transferred custody to the father because the mother was withholding visitation:

we also agree with the trial court that a change of custody was necessary. Initially, it is evident from [the mother's] repeated, willful frustration of [the father's] visitation rights and from the expert testimony, that [she] is intent on thwarting any relationship between her daughter and the child's father . . .

Moreover, "that a change in custody may prove temporarily disruptive to the child[] is not determinative, for all changes in custody are disruptive"<sup>145</sup>.

In view of [the mother's] adamant refusal to cooperate with visitation, the only means of vindicating the child's very substantial and, under the particular circumstances presented, overriding interest in having a relationship with both parents, is to award legal and physical custody of the child solely to her father . . . . Accordingly, the order of the Supreme Court . . . [is] affirmed, without costs.<sup>146</sup>

In *Walden v. Walden*,<sup>147</sup> the Second Department affirmed the transfer of custody from an alienating father to the targeted mother:

The conclusion of both forensic

evaluations was that it was the father who was primarily responsible for the children's emotional disturbance, as a result of his attempts to alienate their natural affection for their mother. The father's influence was most evident in the son, who, at age 8, no longer referred to the defendant as his mother, but derogatorily called her by her given name and mimicked the abusive names which he had heard the plaintiff direct at her. Finding it unlikely that the father would cease this harmful conduct, the court transferred custody of the son to the mother in order to remedy the deteriorating relationship.<sup>148</sup>

So too, in *Gago v. Acevedo*,<sup>149</sup> the Second Department affirmed the award of custody to the father. There, the father "fostered the mother-son relationship" while the mother, in contrast:

persistently interfered with the father's visitation rights by making unfounded allegations of child abuse against the father, by coaching the child to make false allegations of abuse, and by causing disruption to the child's visitation and vacation plans with his father.<sup>150</sup>

*K.L. v. M.L.*<sup>151</sup> involved a mother who made false allegations against the father during the divorce action. Her *paramour* filed a complaint against the father accusing him of sexually molesting his six-year-old son. The mother also told her oldest daughter that she was "a horrible daughter," "didn't deserve to live" and sent her to live with her father.<sup>152</sup> Another time she told her daughter that the father was abusive and that "she hoped [she] did not end up with someone like him."<sup>153</sup> She took the daughter's cell phone away, preventing her father from contacting her, and did not forward notices of school or other important events, causing the father to miss many of them. The trial court found that the record "clearly establishes parental alienation" by the mother against the father.<sup>154</sup> It concluded that the mother's "anger and hostility . . . made her unfit to be the custodial parent since her attitude would substantially interfere with her ability to place the needs of the children before her own in fostering a continued relationship with the noncustodial parent."<sup>155</sup>

Accordingly, the court awarded the father custody of the parties' children.

In other recent decisions too, the Second Department awarded two fathers custody because the fathers were "more likely to ensure meaningful contact between the children and the noncustodial parent."<sup>156</sup>

### The Court's Duty and Role:

In a custody or visitation contest the court sits, not merely as an arbiter between two adversary parties, but "as *parens patriae*<sup>157</sup> of the young children."<sup>158</sup> As *parens patriae*, the court must protect these children who, because of their age, are unable to protect themselves, and because of their feuding parents, have no effective protectors.<sup>159</sup> As the Court of Appeals noted, "The burden on a Judge when he acts as *parens patriae* is perhaps the most demanding which he must confront in the course of his] judicial duties. Upon his wisdom, insight and fairness rest the future happiness of his wards."<sup>160</sup> The court must place itself in the position of a "wise, affectionate and careful parent" and provide for the child accordingly.<sup>161</sup> Thus, even when a child has been programmed to believe that contact with the non-custodial parent is harmful and that he is better off having no contact with him, the court must look behind the reasons and do what is in the long-term best interests of the child. Courts bear a particular responsibility to undo the damage since, typically, it was the court's initial grant of authority to the alienating parent that made the alienation possible. Courts may not simply throw their hands up in abdication of this very difficult situation.<sup>162</sup>

### Endnotes

1. Although alienation might be employed by either parent, because it is more likely to be employed by mothers than by fathers, *see, generally*, Stanley S. Clawar & Brynne V. Rivlin, *Children Held Hostage: Dealing with Programmed and Brainwashed Children* Ch. VII, ("The Female Factor: Why Women Programme More Than Men")(American Bar Association Section of Family Law, 1991), and because mothers are more likely to obtain custody than fathers, Brandes, 4 Law and the Family New York §§ 1:2 & 1:3, for ease of reading this article will at times refer to the target parent in the masculine gender and the alienating parent in the feminine.
2. Part One of this article originally appeared in Vol. 38 No. 1 of the Family Law Review (Spring, 2006).
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4. *See, e.g.*, Joan B. Kelly & Janet R. Johnston, *The Alienated Child, A Reformulation of Parental Alienation Syndrome*, 39 Family Court Review 249, 251 & 253 (2001).
5. *See, e.g.*, *J.F. v. L.F.*, 181 Misc2d 722, 730, 694 NYS2d 592 (Family Court, Westchester County, 1999), *aff'd, sub nom*, *Faneca v. Faneca*, 270 AD2d 489, 705 NYS2d 281 (2d Dept., 2000).
6. Richard A. Warshak, *Divorce Poison* 248 (2001).
7. *See, e.g.*, *Clawar, supra*, at 146.
8. *See, e.g.*, *Zafran v. Zafran*, 191 Misc2d 60, 64, 740 NYS2d 596 (Supreme Court, Nassau County, 2002) (Robert A. Ross, J.), *quoting* Justice Jacquelyn Silbermann in *R.B. v. S.B.*, NYLJ, Jan. 21, 2000 at 25, that "Parental Alienation (the term of art for conduct resulting in the poisoning of a child's mind against a parent) has become increasingly prevalent in troubled marriages."
9. *Clawar, supra*, at 173; Deirdre Conway Rand, *The Spectrum of Parental Alienation (Part I)*, 15 Am. J. of Forensic Psychology No. 3 (1997).
10. *Id.*
11. *Clawar, supra*, Table 17 at 180.
12. *Id.*
13. Janet Johnston, *Rethinking Parental Alienation and Redesigning Parent-Child Access Services for Children Who Resist or Refuse Visitation* 6 (2001) (hereinafter "Rethinking").
14. *Id.*
15. *Id.*
16. *Id.* at 6.
17. *Id.* at 6-7.
18. *Id.*
19. *Id.*
20. Brandes, 4 Law & The Family, NY, Child Custody § 1:16 at 78 (2d ed., 1997).
21. *Warshak, supra*, at 5.
22. *Id.*
23. *Id.*
24. *Id.*
25. *Kelly & Johnston, Reformulation, supra*, at 257 ("these behaviors of the aligned parent (and his or her supporters)

- constitute emotional abuse of the child”); *Karen B. v. Clyde M.*, 151 Misc2d 794, 574 NYS2d 267 (Family Court, Fulton County, 1991), *aff’d sub nom.*, *Karen PP v. Clyde QQ*, 197 AD2d 753, 602 NYS2d 709 (3d Dept., 1993) (“any parent that would denigrate the other by . . . involving the child as an instrument to achieve his or her selfish purpose is not fit to continue in the role of a parent”); *Bragar v. Bragar*, NYLJ 6/21/02 (Sup. Ct., NY Co.) (Jacqueline Silbermann, J.), *quoting Safah v. Safah*, NYLJ 1/8/92 p.26 col. 5 (Sup. Ct., Suffolk Co.) (brain-washing of children is “equivalent to . . . physical abuse” and amounts to egregious misconduct); *Warshak, supra*, at 14 (“Experts regard the attempt to poison a child’s relationship with a loved one as a form of emotional abuse. As with other forms of abuse, our first priority must be to protect the children from further damage.”); *Joel R. Brandes*, Parental Alienation, NYLJ 3/28/00 at 3 (“inducing parental alienation in a child is a form of child abuse, which should be punishable as abuse under the Family Court Act”).
26. *Matter of Ramazan U.*, 303 A.D.2d 516, 756 N.Y.S.2d 442 (2d Dept., 2003) (“The documented efforts of the mother to interfere with the visitation of the noncustodial parent and to alienate the child from his father are sufficient to support a finding of neglect”).
27. Joan B. Kelly & Janet R. Johnston, *The Alienated Child, A Reformulation of Parental Alienation Syndrome*, 30 Family Court Review 249 at 264 (2001) (hereinafter “Reformulation”).
28. *Id.*
29. *Matter of Wesley R.*, 307 AD2d 360, 763 NYS2d 76, 77-78 (2d Dept. 2003).
30. *Grisanti v. Grisanti*, 4 AD3d 471, 772 NYS2d 700 (2d Dept. 2004).
31. *Giraldo v. Giraldo*, 85 AD2d 164, 447 NYS2d 466 (1<sup>st</sup> Dept. 1982).
32. 85 AD2d at 169.
33. 85 AD2d 174.
34. *Giraldo*, 85 AD2d at 175.
35. *Zafran v. Zafran*, 191 Misc2d 60, 64, 740 NYS2d 596 (Supreme Court, Nassau County 2002) (Robert A. Ross, J.).
36. *Id.*
37. *Id.*
38. *Fallon v. Fallon*, 4 AD3d 426, 427, 771 NYS2d 381(2d Dept. 2004).
39. Elizabeth Ellis, *Divorce Wars, Interventions With Families in Conflict* 225 (American Psychological Association, 2000); *Clawar, supra*, at 152.
40. *Id.*
41. *Clawar, supra*, at 152.
42. Michael R. Walsh & J. Michael Bone, *Parental Alienation Syndrome: An Age-old Custody Problem*, 71 Fla. Bar J. 93 (1997).
43. *Id.* at 244-245.
44. *Id.*
45. *Ellis, supra*, at 224.
46. *Ellis, supra*, at 224.
47. *Walsh & Bone, supra*.
48. *Walsh & Bone, supra*.
49. *Clawar, supra*, at 107.
50. *See, e.g., Johnston, Rethinking, supra*, at 7; Dr. Joan Kelly, 2005 Annual New York State Interdisciplinary Forum on Mental Health and Family Law, *Resolving Custody Disputes: What Helps Children? What Hurts?* (presented at the New York City Bar, June 4, 2005) at 8.
51. *Id.*
52. *Id.*
53. *Clawar, supra*, at 149, citing a case in which a boy had to be hospitalized before the court would transfer custody to the father, and Deirdre & Randy Rand & Leona Kopetski, *The Spectrum of Parental Alienation Syndrome, Part III: The Kopetski Follow Up Study*, 23 Am. J. Forensic Psychology 15 (2005), citing two more cases “in which children under the age of 10 had to be hospitalized before the court was willing to take the strong action needed.
54. *Ellis, supra*, at 223-27 (citing several studies and concluding, at 225, that many experts in the field “clearly support rapid and immediate changes of custody,” and, at 224, “The similarity of PAS to *folie à deux* suggests that removal of the child from the custody of the alienating parent and immediate placement with the targeted parent may be the best intervention.”) In severe instances in which the child threatens to harm himself or others, physical custody can be transferred to some interim residence such as a friend, extended family or residential or psychiatric facility, away from the alienating parent. *Warshak, supra*, at 275.
55. *Ellis, supra*, at 223-24; *Warshak, supra*, at 256; *Clawar, supra*, at 150 (“phase in” of merely some additional contact was not “especially effective” in reconciling the children with their parents but in the approximately 400 cases in which courts made severe increases of contact, often over the objections of the children, there was “positive change in 90 percent” of them); John Dunne & Marsha Hedrick, *The Parental Alienation Syndrome: An Analysis of Sixteen Selected Cases*, 21 Journal of Divorce & Remarriage 21 (1994) (“There were no cases in which a change of custody occurred but the alienation continued. In the other thirteen cases, various interventions were tried, ranging from therapy for each of the parents individually, therapy for the

parents together, therapy for the children with the alienated parent, therapy for the children with the alienating parent, and the assignment of a Guardian Ad Litem to the case. In two of these cases, the children were evaluated as having experienced “some” or “minimal” improvement in their relationship with the alienated parent. In the other eleven cases, there was no improvement and in two of these cases, the alienation was evaluated as ‘worse’ after the interventions.”); *Rands & Kopetski, supra* (summarizing these and other studies and concluding, on the basis of their own study, that a “court’s decision with respect to custody and visitation [was] essential for interrupting or preventing [the completion of] alienation. Therapy as the primary intervention was ineffective for interrupting alienation and sometimes made things worse. . . . Placing the child in the custody of the [target parent] was found to be the most effective means of helping children in alienation scenarios to maintain relationships with both parents.”)

56. *Clawar, supra*, at 151.

57. *Ellis, Clawar, Dunne & Hedrick and Rands & Kopetski, supra* n.55.

58. *Clawar, supra*, at 131 *et seq.*

59. *Clawar, supra*, at 139.

60. *Clawar, supra*, at 140.

61. *Clawar, supra*, at 132-33.

62. *Id.* at 147.

63. *Id.*

64. *Clawar, supra*, at 152.

65. *Clawar, supra*, at 132.

66. *Id.* at 133.

67. *Clawar, supra*, at 133. Dr. Clawar describes how one child, in response to this question, replied, “I listened to my mother, who talks on the phone every night. She tells all her friends about my dad, and I know all those stories are true.” *Id.*

68. *Id.* at 134.

69. *Id.* at 134-36.

70. *Clawar, supra*, at 136.

71. *Id.* at 136-38.

72. *Id.* at 138.

73. *Clawar, supra* at 141.

74. *Id.* at 141.

75. *Id.*

76. *Id.*

77. *Id.* at 144.

78. *Id.*

79. *Id.* at 142.

80. *Id.* at 144. As stated earlier, *supra* n.55, alienation was able to be reversed in 90% of the cases.

81. *Clawar, supra*, at 153.

82. *Id.* at 144-48; *Warshak, supra*, at 251.

83. *Clawar, supra*, at 147.

84. *Id.* at 148-51.

85. *Id.* at 150.

86. *Id.*

87. *Id.* at 144.

88. *Warshak, supra*, at 256; nn. 55-57, *supra*.

89. *Warshak, supra*, at 273.

90. *Warshak, supra*, at 273.

91. *Warshak, supra*, at 274.

92. *Warshak, supra*, at 275.

93. *Id.* at 152.

94. *See*, text at nn. 39-57, *supra*.

95. *Warshak, supra*, at 251.

96. *Id.*

97. *Id.* at 252.

98. *Id.* at 252; *Clawar, supra*, at 154.

99. *Young v. Young*, 212 AD2d 114, 122, 628 NYS2d 957 (2d Dept. 1995) (quoting *Bostinto v. Bostinto*, 207 AD2d 471, 472).

100. *Id.*

101. *Young, supra*, 212 AD2d at 115 (quoting *Resnick v. Resnick*, 134 AD2d 246, 247).

102. *Klutchko v. Baron*, 1 AD3d 400, 768 NYS2d 217 (2d Dept. 2003) (citations and quotations omitted).

103. *Matter of Grisanti v. Grisanti*, 4 AD3d 471, 772 NYS2d 700 (2d Dept. 2004).

104. *Young*, 212 AD2d at 122 (quoting *Raybin v. Raybin*, 205

AD2d 918, 921).

105. *Young, supra* (citing *O'Connor v. O'Connor*, 146 AD2d 909, 910; *Lohmiller v. Lohmiller*, 140 AD2d 497, 498).

106. *Young*, 212 AD2d at 115 (quoting *Maloney v. Maloney*, 208 AD2d 603, 603-04).

107. *Young, supra*; but see *John A. v. Bridget M.*, 16 AD3d 324, 791 NYS2d 421 (1<sup>st</sup> Dept. 2005) (Friedman, J., concurring) (even false allegations of sexual molestation do not invoke a “per se rule requiring transfer of custody from the interfering parent . . . or give rise to a rebuttable presumption in favor of a change of custody”).

108. *Young*, 212 AD2d at 115.

109. *Id.*

110. *Young*, 212 AD2d at 120.

111. *Id.*

112. *Young*, 212 AD2d at 115.

113. See, e.g., *Prugh v. Prugh*, 298 AD2d 569, 748 NYS2d 695 (2d Dept. 2002) (affirming transfer of custody to the father because of the mother’s interference with the relationship between him and the children); *Fallon v. Fallon*, 4 AD3d 426, 427, 771 NYS2d 381 (2d Dept. 2004) (affirming a Family Court determination that “the mother’s animosity toward the father and her attempts to exclude him from his children’s lives were harmful to the children and rendered her the less fit parent”); *Green v. Gordon*, 7 AD2d 528, 776 NYS2d 73 (2d Dept. 2004) (affirming transfer of custody to father because, *inter alia*, “the mother was openly hostile toward the father, deliberately frustrated and interfered with the father’s visitation rights, filed petty or baseless violation petitions, made false allegations of child neglect, and instigated a physical altercation with the father’s wife in front of the child”); *Bobinski v. Bobinski*, 9 AD3d 441, 780 NYS2d 185 (2d Dept. 2004) (“mother’s conduct . . . in alienating the children from their father, interfering with their relationships, and disregarding the father’s rights as a joint custodial parent, were acts so inconsistent with the best interests of the children” that it justified the trial court’s transfer of custody to father).

114. *Renee B. v. Michael B.*, 204 AD2d 57, 611 NYS2d 831 (1<sup>st</sup> Dept. 1994).

115. 204 AD2d at 59.

116. *R.B. v. S.B.*, NYLJ 3/31/99 at 29 (Supreme Court, NY County) (Jacqueline Silbermann, J.).

117. *Zafran v. Zafran*, 191 Misc2d 60, 63-64, 740 NYS2d 596 (Supreme Court, Nassau County 2002) (Robert A. Ross, J.).

118. *Id.* 191 Misc2d at 64.

119. For a discussion of the distinction between parental alienation and parental alienation syndrome see Part One n.13,

*infra*.

120. *Zafran v. Zafran*, 191 Misc2d 60, 63-64, 740 NYS2d 596 (Supreme Court, Nassau County 2002) (Robert A. Ross, J.) (quoting Gassman and Tippins, *Evidence in Matrimonial Cases*, at 93); accord *Matter of J.F. v. L.F.*, 181 Misc2d 722, 723, 694 NYS2d 592 (Family Court, Westchester County 1999).

121. *Id.* 191 Misc2d at 64.

122. *Id.*

123. *Zafran v. Zafran*, NYLJ 10/21/02 at 26 col. 2 (Supreme Court, Nassau County) (Ross, J.), *aff’d*, 306 AD2d 468, 761 NYS2d 317 (2d Dept. 2003).

124. *Id.*

125. *Id.*

126. *Id.*

127. *Zafran v. Zafran*, 306 AD2d 468, 761 NYS2d 317 (2d Dept. 2003).

128. *J.F. v. L.F.*, 181 Misc2d 722, 694 NYS2d 592 (Family Court, Westchester County 1999), *aff’d, sub nom. Faneca v. Faneca*, 270 AD2d 489, 705 NYS2d 281 (2d Dept. 2000).

129. *J.F., supra*, 181 Misc2d at 723.

130. *Id.* 181 Misc2d at 725.

131. *Id.*, 181 Misc2d at 728.

132. 181 Misc2d at 729 (citing *Daghir v. Daghir*, 82 AD2d 191, *aff’d*, 56 NY2d 938).

133. 181 Misc2d at 731-32.

134. 181 Misc2d at 731.

135. *Id.* 181 Misc2d at 730 (footnote omitted).

136. 181 Misc2d at 731.

137. 181 Misc2d at 730.

138. *Id.* 181 Misc2d at 732.

139. *Id.* 181 Misc2d at 732-33.

140. *Faneca v. Faneca*, 270 AD2d 489, 705 NYS2d 281 (2d Dept. 2000).

141. *Karen B. v. Clyde M.*, 151 Misc2d 794, 574 NYS2d 267 (Family Court, Fulton County 1991), *aff’d sub nom., Karen PP v. Clyde QQ*, 197 AD2d 753, 602 NYS2d 709 (3d Dept. 1993).

142. *Id.* 151 Misc2d at 801.

143. *Karen PP v. Clyde QQ*, 197 AD2d 753, 602 NYS2d 709 (3d



Dept. 1993).

144. *Vernon v. Vernon*, 296 AD2d 186, 746 NYS2d 284 (1<sup>st</sup> Dept. 2002), *aff'd*, 100 NY2d 960, 768 NYS2d 719 (2003).

145. *Citing Matter of Nehra v Uhlar*, 43 NY2d 242, 248.

146. *Vernon v. Vernon*, 296 AD2d 186, 746 NYS2d 284 (1<sup>st</sup> Dept. 2002), *aff'd*, 100 NY2d 960, 768 NYS2d 719 (2003).

147. *Walden v. Walden*, 112 AD2d 1035, 492 NYS2d 827 (2d Dept. 1985).

148. *Id.*

149. *Gago v. Acevedo*, 214 AD2d 565, 625 NYS2d 250 (2d Dept. 1995).

150. 214 AD2d at 566.

151. *K.L. v. M.L.*, 9 Misc.3d 1128(A), 2005 WL 3017654 (N.Y. Sup.), 2005 N.Y. Slip Op. 51822 (U) (Supreme Court, Suffolk County Oct. 28, 2005)(Slip copy)(Joseph Pastoressa, J.).

152. *Id.* at 4.

153. *Id.* at 6.

154. *Id.*

155. *Id.* at 7 (quotations and citations omitted).

156. *See, e.g., Galanos v. Galanos*, 28 AD3d 554, 816 NYS2d 90 (2d Dept. 2006); *Fisher v. DeFlora*, 25 AD3d 552, 806 NYS2d 438 (2d Dept. 2006).

157. *Parens Patriae* literally means “parent of the country,” and refers to the role of the state as sovereign and guardian of persons under disability. *Black’s Law Dictionary* 1114 (6<sup>th</sup> ed., 1990).

158. *Perlstein v. Perlstein*, 76 AD2d 49, 57, 429 NYS2d 896 (1<sup>st</sup> Dept. 1980).

159. *Matter of Sayeh R.*, 91 NY2d 306, 670 NYS2d 377 (1977); *see, e.g., NY Const*, art XVII, § 3.

160. *Lincoln v. Lincoln*, 24 NY2d 270 (1969).

161. *Finlay v. Finlay*, 240 NY 429 (1925).

162. *Smith v. Smith*, 283 AD2d 1000, 723 NYS2d 804 (4<sup>th</sup> Dept. 2001) (error for judge to abdicate responsibility by claiming that the situation was hopeless and that the court could not “do miracles”).