

Parental Alienation & The Child's Voice in Family Proceedings

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Outline of Presentation

- **Introduction: Why do children reject a parent?**
 - Concepts: Alienation vs. Justified Rejection
 - Emotional damage to children
- **Court Cases & Responses (Canada/UK comparison)**
 - Profile of alienation cases
 - Understanding individual cases
 - Role of experts & CAFCASS
 - Importance of hearing the voice of children
 - Court-ordered interventions: counseling & parenting education
 - Change in residence
 - Innovative responses: Canada & USA
- **Conclusions**
 - Complexity of cases
 - Reforms for courts to address delay, maintain better control & collaborate better with with mental health professionals

Concepts & Context

High Conflict Separations

(MacLean & Eekelaar, 1996; Kelly, 2007)

- Portion of high conflict cases declines, but does not disappear
 - 30% of couples are “high conflict” at separation
 - 10% -15% are high conflict after 3 years (Kelly)
- High conflict cases characterized by mistrust & repeated litigation
 - Often reflects unresolved feelings at separation of anger or rejection
 - Personality disorders
- Children distressed by high conflict separation
 - High conflict may cause alienation, but not necessarily
 - High conflict is worst for children if parents engage them in disputes
 - More time with a supportive father (non-resident parent) may help child despite high conflict , but if his parenting is not strong, less contact may be best for child (Fabricius & Leucken, 2007; Sandler et al, 2010)

Old Problems & New Concepts

- Resistance of children to visitation, esp. in high conflict separations has always been an issue
 - c.1900 concern about “poisoned minds”
- 1987: Richard Gardner - “parental alienation *syndrome*”
 - important concept but original articulation was inadequate
- 2001: Janet Johnston & Joan Kelly
 - Not a “syndrome”
 - DSM issue
 - Not “mental disorder” of the child
 - Often not all fault of one parent
 - The “alienated child:” consider
 - Conduct of both parents,
 - Vulnerability of child
 - Age
 - Anxiety, dependency
 - Siblings etc.



Significance of “discovery” of alienation

- Heightened awareness
 - more recognition by professionals, courts & parents
 - also more unfounded claims of “alienation” in the courts
 - “alienation” is useful concept, but can heighten conflict
- May help parents understand harm they are causing child
- Articulation of “alienation” has facilitated research
 - long and short term harm of alienation
 - intervention strategies

Concepts

- Kelly & Johnston: Alienated Child: “child who freely and persistently expresses unreasonable negative feelings and beliefs (such as anger, hatred, rejection, and/or fear) toward a parent that are disproportionate to their actual experience of that parent.”
- Alienation vs. Justified Rejection [“estrangement”]
 - Need to determine whether child’s conduct is justified (e.g. by abuse, poor parenting, step parent rejection etc.)
- Many cases are “mixed” with both parents engaging in alienating conduct or having some responsibility for break-down in relationship with one parent.

Alienating Behaviour of Parents - Examples

- Verbal, non-verbal, conduct
- Denigrating other parent, extended family & even pets
- Asking child to carry hostile messages
- Asking child intrusive questions about other parent (“spying”)
- Creating a need for child to hide information & conceal positive feelings about other parent
- False empowerment
 - “You can decide whether you want to see your Dad” [but not whether you go to school, church etc.]
- Creating fears
 - False allegations of abuse
- Borrowed or exaggerated stories:
 - “My Dad beat my Mom when I was in her tummy”
- Arranging fun events that conflict with visits

Alienating Parental Behaviour & Alienation

- In high conflict cases, alienating parental behaviour is common
 - Disparaging comments about other parent are common
 - May escalate to active undermining of relationship to other parent
 - Often both parents are engaging in poor parenting, but one parent who has primary responsibility for contact problems
- Despite alienating conduct by one or both parents, many children not alienated
- Alienation often starts as child ages & personality becomes integrated (e.g. 8-12yrs)
 - Cases may change over time – sometimes quickly
 - Alienation may start a considerable time after separation
- Abusive and alienating behaviour may be related (sabotage)
 - Abusive father may undermine relationship with victim parent
 - Child may identify with abusive, powerful parent

Range of Reasons for Child to Resist Contact

- Normal development
 - Infants may have difficulty with transitions
 - In teen years, stronger identification with one parent (affinity)
- Reaction to separation
 - Child's loyalty reaction to discovery of affair
- Rejected parent is too rigid or lacks insight
 - is parent not attuned to child?
- Child has genuine fear due to abuse
 - even an abused child is likely to have some positive feelings
 - alienated child likely to express all negative attitudes
- Alienating conduct of favoured parent
- Alienation of child may result in rejected parent "dropping out," but also many "disappearing Dads" despite supportive Moms.

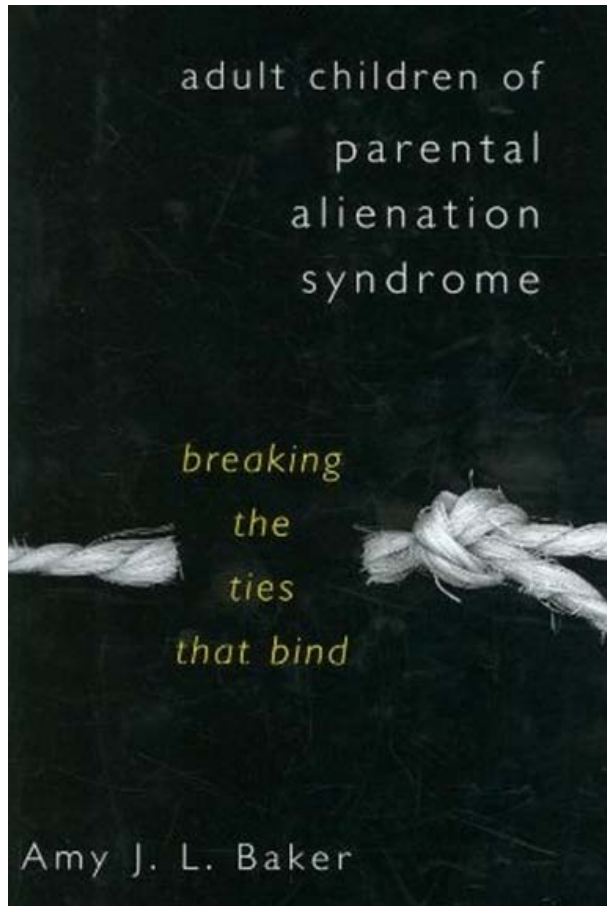
Mixed Cases Common

- Alienating conduct by both parents with child aligning due to circumstances of separation (e.g absence of parent or new family soon after separation)
- Alienating conduct by favoured parent lack of warmth and poor parenting by rejected parent
- Spousal abuse leads favoured parent to react to other parent & causes fear in child
 - Alienation & abuse are not mutually exclusive
- As children start to become alienated they can become obnoxious, hard to discipline etc. -> other parent may have “poor reactive parenting”

Negative Effects Of Alienation

- Most kids want contact with both parents (even if abuse)
- Alienation is emotional harmful to children
 - Loss of contact with parent & extended family
 - Guilt, self hatred, self-esteem issues
 - Continued unconscious identification with rejected parent
 - Child may come to believe unfounded abuse allegations
- Behavioural disturbances in alienated children
 - Aggression & conduct disorders
 - Poor impulse control
- Alienating parent is often personality disordered -> perception of reality is in some respects distorted & will not respond “rationally” to court orders

Young Adults Alienated as Children



- Amy Baker (2007)
Adult Children of Parental Alienation Syndrome
- Higher rates of depression, relationships difficulties
- Regret that when they were children their wishes were not ignored
- Methodological limitations to this research

Prevalence of High Conflict & Alienation

- No reliable data on alienation, contact problems or high conflict
 - Lack of consensus about definitions
 - Variation over course of recent history
 - Likely more today as dads more involved in intact families & post-separation
- 50% + of high conflict separations have disagreements over kids
 - American Bar Association
- USA estimates:
 - 1% of children & youth suffer alienation (Benet, 2010)
 - 20,000 – 250,000 new cases a year (Warshak, 2010)
- Exact numbers unknown, but alienation is significant problem
 - Negative effects on children
 - Profoundly distressing for parents who lose relationship to child
 - Societal frustration with family justice system

Gender Politics

- Advocacy groups for both mothers and fathers use “welfare rhetoric” to deny and seek contact.
(Kaganas & Day Sclater, 2004;Kaganas , 2011)
- Some feminists reject alienation as a concept and argue that mothers only deny access if fathers are abusive. (Meier, 2010)
- Father’s groups are increasingly raising concerns about contact problems and children suffering from lack of involvement with Dads.
- Also rejected mothers.
- Child support is state enforced, why not contact?
- Failure of justice system to adequately address alienation fuels perception of bias against fathers

Court Cases Responding to Contact Problems & Alienation

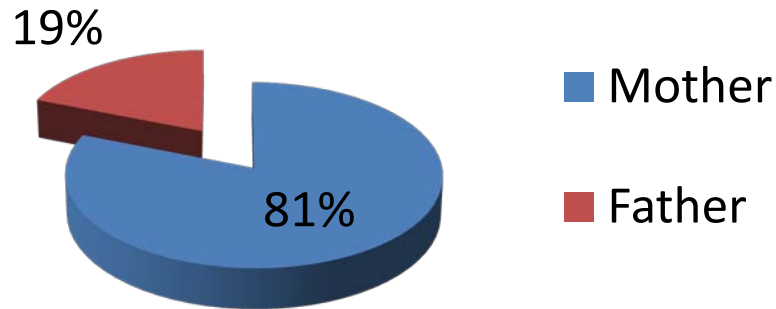


Who Alienates Children? (UK)

(UK cases in law reports – court finds alienation - 2000 to 2010: n=38)

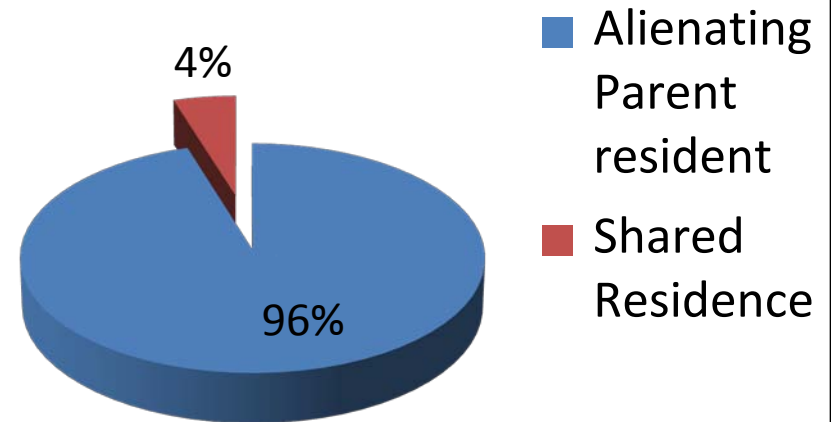
Mainly mothers

Gender of Alienating Parent



But more so, residential

Alienating Parent's Degree of Control



Presumption of Contact with Both Parents

- Contact as “basic right of the child”
 - *M v M (Child Access)*, [1973] 2 All E.R. 81
 - Need for **caution with “rights” rhetoric** in alienation cases, as alienating parent may claim that it is child’s “right” to not have contact. Better to use rhetoric of each parent having **“duty” to support the other.**
- “Assumption” of contact. Contact is “almost always” in the interests of the child.
- “Judges should be very reluctant to allow the implacable hostility of one parent (usually the parent who has a residence order) to deter them from making a contact order where the child’s welfare requires it. The danger of allowing the implacable hostility of the residential parent (usually the mother) to frustrate the court’s decision is too obvious to require repetition.”

-*Re J (A Minor)*, [1994] 1 FLR 729, per Balcombe LJ

Initial Legal Issue: What is the Problem?

- Alienation vs. justified rejection
- “not wrongful denial of contact if”
 - Parent impaired by alcohol or drugs;
 - Repeated or significant lateness or failure to exercise contact;
 - Illness of child
- Consider attitudes & capacities of favoured & rejected parent
- Abuse allegations
 - Founded and fabricated
 - Justified rejection – history of sexual abuse
 - *Re C*, [2010] EWCA Civ 89
- Expert evidence (CAFCASS)
 - Court-appointed vs. party-retained
- Wishes and perceptions of child
 - How communicated to court?
 - Not determinative, but important for child to be heard

Domestic Violence & Contact

- “Proved domestic violence” is an important factor in suspension of contact, but not an absolute bar.
 - *Re L (Contact: Domestic Violence)*, [2002] 2 FLR 334, Dame Butler- Sloss P.
 - *Re C (Children)*, [2009] EWCA Civ 994: no need for fact finding hearing to allow father to have contact with children as 3 years since last assault on mother. Thorpe LJ: “the family justice system... is stretched to the breaking point...an unnecessary hearing is wasteful of judicial resources”
- Supervised contact is possible, especially if d.v. concerns & lengthy delay in resolution: *S.S. v K.S.*, [2009] EWHC 1575 (Fam)
- 18/38 UK cases of alienation claimed (47%), Mom alleged abuse by Dad -> Court found significant validity in 6/18 (33%).
 - “unscrupulous parents could effectively derail contact by making false or exaggerated allegations of domestic violence”:
S.S. v K.S., [2009] EWHC 1575 (Fam), per Headly J.

Alienation & Contact Issues: Experts

- Court-ordered assessment by expert (CAFCASS)
 - Court-appointed very influential (followed 90% of cases)
- But assessments
 - Take time to complete
 - Intrusiveness
 - Potential expense
 - Some professionals do not understand alienation

Hearing the voice of the child

(Caldwell, 2011; Birnbaum & Bala, 2010 & Birnbaum, Bala & Cyr, 2011)

- Ensuring that child's voice is heard is important, even in alienation cases
 - better child outcomes
 - "A voice but not a choice"
- Methods of hearing from child vary with age, wishes of child, resources, professional "comfort"
 - CAFCASS
- Role for private judicial meetings with child (Sir Mark Potter)
 - Not to assess wishes or replace CAFCASS of counsel
 - Only if child wants
 - No evidence of harm from meeting judges
 - Role for judicial explanation to child after decision

Two Responses to High Conflict & Alienation

- Objective is to change attitude & behaviour of alienating parent and alienated child

Two approaches

- **Conflict reduction & resolution vs.**
- **Coercive legal responses**

- Determining the most appropriate combination or sequence responses depends on:
 - Nature of relationship dynamics
 - Previous interventions attempted
 - Community & individual resources

Conflict Reduction & Parental Education

- Address underlying relationship issues & facilitate contact
 - Post-separation parenting education
 - Mediation, counseling
- Best for most cases
- But requires some willingness by parties to participate
- Attitude of solicitors often influence parents
 - Supportive of counseling or skeptical
 - Least impact on severely alienating parents
- Threat of legal response may encourage parental engagement, but sometimes not enough
 - Esp. with personality disordered parents
- Education/counseling not effective in more severe cases

Judges Educating & Exhorting Parents

- Many parents influenced by judicial approaches
- Judicial 'Education' of parents
 - Discussion from Bench about importance of relationship of child to both parents
- Judicial 'Exhortation' of parents
 - Comments about importance of relationship of child to both parents
 - Orders for attending Information Programs,
 - Orders and adjournments may include provisions for better parental behaviour
 - e.g. no derogatory comments against other to the children
 - enforcement is a problem

Court Ordered Therapy, Counseling or Education

Family Assistance Order, Children Act s. 16)

- Order may apply to both child and parents
 - Study 21% of UK cases (includes both with PA finding & without)
- Court ordered therapy can be effective if judge can persuade parents involved of its value and importance of ensuring that the children have positive relationships with both parents
 - For less severe alienation, a judicial “push” towards therapy may have positive effects
- Most effective if those receiving “reunification” counselling or therapy do so willingly and voluntarily
 - 6mo max until review; likely 12 mo max
- Remedy for violation is not contempt, but change in parenting/residence
- In severe alienation cases, likelihood of positive outcome for therapy is low (especially if only the child is in therapy), unless change in residence

Contempt – Rarely Used in UK

- Purpose is to secure compliance, not punish
 - Contempt is a “blunt instrument” for promoting better parenting, but threat of sentence can be effective
 - Consider interests of child in sentencing

Re M (Contact Order: Committal), [1999] 1 FLR 810 (CA)

- Sentences: If flagrant & persistent breach, jail is possible
- Alienating parent may be ‘martyr-like, to child
- Suspend sentencing to see if there is compliance
 - Impose behavioural conditions
- *Re S (Contact Dispute: Committal)* [2004] EWCA Civ 1790,
“It seems to me that this was an order which was justified both in terms of enforcing respect for the orders of the court, and, therefore, for the rule of law in society, and also, as a last resort, to coerce the mother into complying with court orders. In my view, the judge's decision was amply justified”.

Change of Residence

“The stark dilemma” (Preston J. BCSC, 2004)

- Most extreme judicial remedy, but usually only way to affect most severe alienation
 - Some children change very quickly with residence change
 - In a few reported cases, children traumatized by change and reversal needed
- Is change in residence in child’s best interests
 - Compare parenting capacities
 - Will rejected parent support relationship to other parent?
 - Is alienating parent personality disordered?
- Increasing judicial willingness to consider (UK & elsewhere):
“In recent cases where irrational implacable hostility has been demonstrated, judges have been increasingly willing, where it is in the child’s interest, to move the child from one parent to the other....”
Re M(A child), [2004] EWCA Civ 1262, per Wall LJ

UK Courts Less Likely to Respond to Finding of Alienation by Change in Parenting

Canada

Responses where alienation found

- Counseling ordered in 29% of cases (67/232), both where alienation found & rejected
- Reversal of custody in 63/137 (46%) change custody to alienated parent (14 with no access)
- 23/137 (17%) change from sole to joint custody

UK

Responses where alienation found

- Counseling ordered in 21% of cases (8/38), both where alienation found & rejected
- Reversal of residence in 6/26 (23%) (only 1 with no contact)
- 1/26 (4%) change to shared residence

Child Welfare Involvement – Local Authority

- Local Authorities more involved in high conflict cases
 - Physical & sexual abuse allegations
 - Higher rates of unfounded sexual abuse allegations in context of parental separation (Bala et al, 2007)
 - Also founded allegations of abuse in this context
 - Alienating parent may have mental health issues
 - Alienating conduct may be emotional abuse
- Local Authority can be asked by court to investigate & provide services
- Provide foster care to facilitate transfer of residence
- Local Authority staff need better training for alienation cases

Variation of Residence – How to Effect

- How to inform child?
- Tipstaff or police may enforce
- Often rapid change is best
- Possible role for Local Authority with transitional foster care
 - *Re S*, [2010] EWCA Civ 325 (CA) (“stepping stone”)
 - No research to support
- Suspension of contact & communication by alienating parent?
 - May be necessary in severe cases as alienating parent may continue to undermine relationship
 - Very rare in UK
 - Almost impossible to prevent communication with a teenager

Non-enforcement of Contact

- In some cases of severe alienation, not enforcing contact may be the least detrimental alternative for child
 - *Re Children B* [2010] EWCA1045
- Query whether some UK decisions too quick to give up enforcement or too optimistic about value of continued judicial exhortation to alienating parent
 - See e.g. *Re S (Children)*, [2009] EWCA Civ 334 (CA):
- Supervised “final” visit or independently vetted letter?
- Hope that relationship may be re-established in late adolescence or adulthood
- Need for judicial realism – end expense & intrusion

Better Court & Mental Health Collaboration

- Need more effective collaboration between courts and mental health services after finding of alienation
- Judicial control & reporting to court post-adjudication
 - Only limited confidentiality to therapy
- Detailed “multidirectional” orders
 - Schools, therapists etc.
- Reporting to judge by mental health professionals
- **Parenting Co-ordinator model** (Coates, 2004; Edmonton, Trussler, 2008)
 - Parents pay
 - Court appoints trained mental health professional (or lawyer) to “manage” case: educate parents, resolve minor disputes (mediation/arbitration), report to court
 - There may also be “reunification therapy” for parents/child
 - May be one professional or team who consult with each other
 - Short adjournments to hear about progress (3mo. - 6mo.)
 - Need research

Short Intensive Transitional Assistance: USA

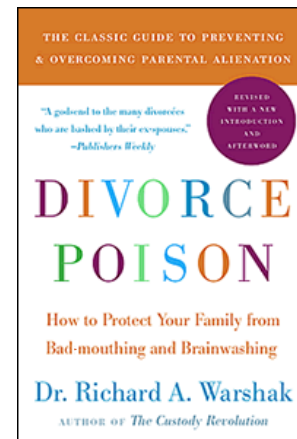
(Warshak, 2010)

- **Family Bridges**

- New custodial parent (rejected) takes child to 4-5 days “psycho-educational program” at resort setting (expensive)
 - Usually with court order or approval, but some voluntary cases
- Small initial study by Warshak indicated that his program often is effectively to change children’s attitudes
 - 22/23 changed by end of week
 - 18/22 maintained strong relationship to gains at 2- 4 years
- No contact with alienating during stay; later attempts to engage the alienating parent (if they are willing)

- www.warshak.com

- *Divorce Poison: How to Protect Your Family from Bad-mouthing and Brainwashing*
- *Welcome Back, Pluto* a DVD for children, teens, and parents



Short Intensive Program for Entire Family

(USA: Sullivan, Ward & Deutsch et al, 2010)

- **Overcoming Barriers Camp (5 families at a time)**
 - **Court order or agreement for both parents and child(ren) to attend 5 day camp program (children may be resistant)**
 - Initial focus on separate groups and working towards engagement in games, art etc. and then reconciliation in
 - Helps both parents and child(ren)
 - Requires both parents to have degree of willingness to attend plus no violence concerns
 - Encouraging research initial research
 - 9/10 families had positive gains at follow-up
 - Expensive – developing less expensive weekend(2 day) program

How Can Courts Better Respond to High Conflict Cases & Contact Disputes?

Need to be More Efficient &
More Effective!

Complexity & Challenge of Contact Cases

- Conflicting versions of events
- Partial responsibility of both parents
 - “mixed cases”
- Personality disordered and high-energy litigants
 - Manipulation and defiance of court orders
 - Often self-represented
 - Appeals & complaints to professional bodies
- Lack of resources
 - More access to education & skills training for parents
 - Better education and awareness for professionals
- Need a “change in culture” – greater recognition by society, professionals and courts of harm to children from high conflict, value of less adversarial dispute resolution, but also importance of role of both parents in lives of their children.
- In a minority of separations, early effective judicial intervention is critical.
- In the most severe and intractable, UK courts need to make earlier use of contempt and change in residence.

Concerns about delay in UK

"Delays are causing children to be left for a considerable proportion of their early lives in atmospheres of violence, high emotion and parental dispute which, if prolonged, is bound to interfere with their long-term development and give rise to problems in adolescence and later life."

Sir Mark Potter, June 6, 2010

Best Practices for Family Courts

(Norgrove, 2011)

- Continued litigation is harmful and ultimately ineffective
 - Delay in resolution is a major problem: “decade of litigation” about 12 year old boy ended without change in residence and no contact with alienated father. *Re S*, [2010] EWHC B19 Fam.
- Delay is a major concern: need more responsive system
- Specialization & Case management – judicial continuity
 - short adjournments & review orders
 - Judge to gain knowledge of dynamics of the case
 - gain credibility & respect of parties
 - Judge to set clear limits & ensure consequences
 - Parental accountability, esp. important for personality disordered parents

Best Practices for Family Courts (2)

(Bala, Birnbaum, Martinson, 2011)

- Judicial role in education, exhortation & setting limits
 - Sanction breach or courts lose credibility
 - Earlier change of residence
- Remaining seized after trial for review
 - Review orders
- Better collaboration of courts & mental health professionals
 - Court ordered involvement & reports to court
 - Monitoring of progress on contact by the court
 - Role for Local Authority
 - Judicial duty to report emotional abuse or engage Local Authority
 - Resources for investigation, support, foster care
 - Parenting co-ordination
 - Agreement of parents or legislation



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- See generally special issue *Family Court Review* 48:1 (Jan. 2010) on Alienation and Children Resisting Contact (can be purchased on-line)