

Parental Alienation and American Family Courts: Common Fallacies and Pitfalls

PRESENTED BY: ASHISH JOSHI

Parental Alienation: What's in a name?

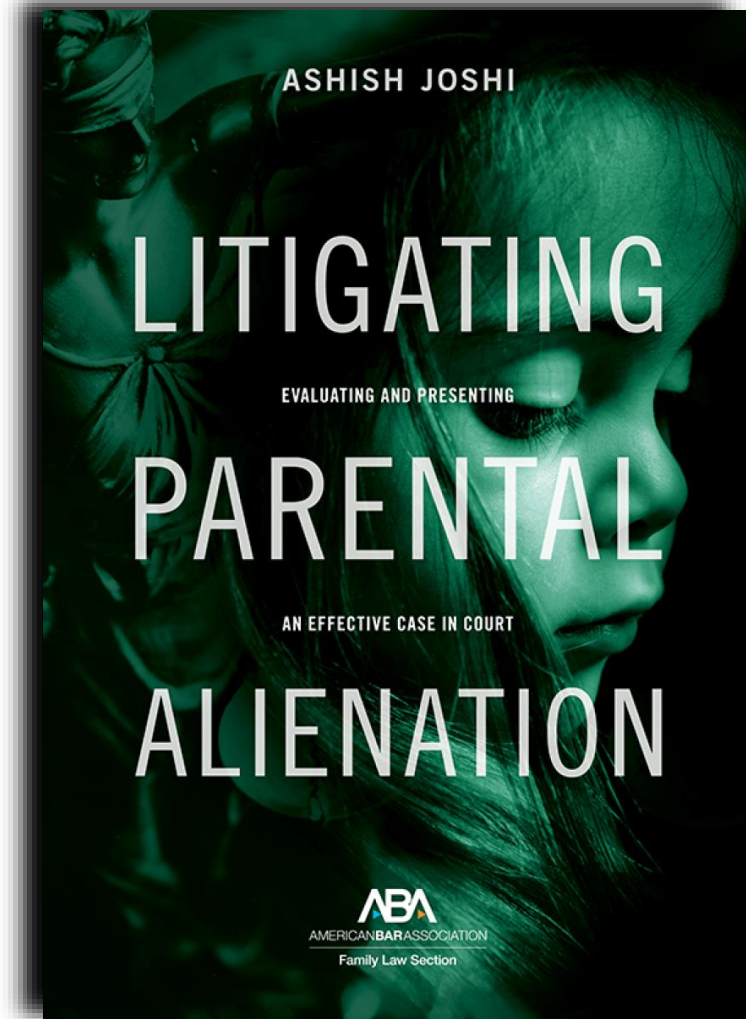
- Brainwashing
- Child Affected by Parental Relationship Distress (CAPRD)
- Gatekeeping
- Parental Alienation
- Parental Interference
- Pathological Alignment
- Pathogenic Parenting
- Programming

Three Goals Presenting a Parental Alienation Case in Court

1. Parental alienation is **real**.
2. Parental alienation is occurring in ***this case***.
3. The children need proper **intervention**.

Parental Alienation is Real

NEW Book for Family Law Practitioners, Judges, Referees, and GALs



Litigating Parental Alienation is my latest book that was released this year.

In this book, I provide practice pointers for targeted parents and their lawyers in handling cases involving parental alienation.

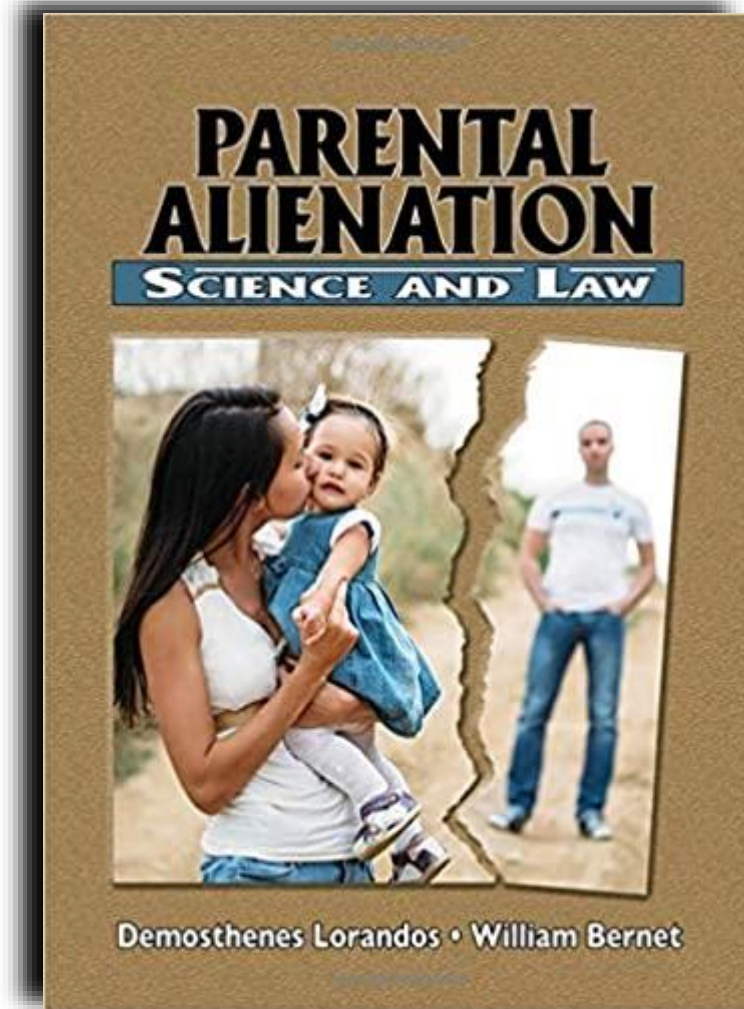
PA is Real & Harmful

“**Parental alienation is a complex and serious issue** that confronts family law judges, practitioners, and court-involved professionals...Research shows that the consequences of parental alienation can be serious and long-lasting. **Early fact-finding and intervention, therefore, is key to halting the alienating behaviors**, preventing further harm, and ensuring that children do not grow up carrying views of their parent that are not justified by reality...Behaviors that unjustifiably alienate a child from a parent, whether intentional or not, are damaging. They harm children and parents alike.”

Hon. Bridget McCormack, Chief Justice - Michigan Supreme Court

Joshi, A. (2021). Foreword in *Litigating Parental Alienation*, Chicago, Illinois: ABA Book Publishing.

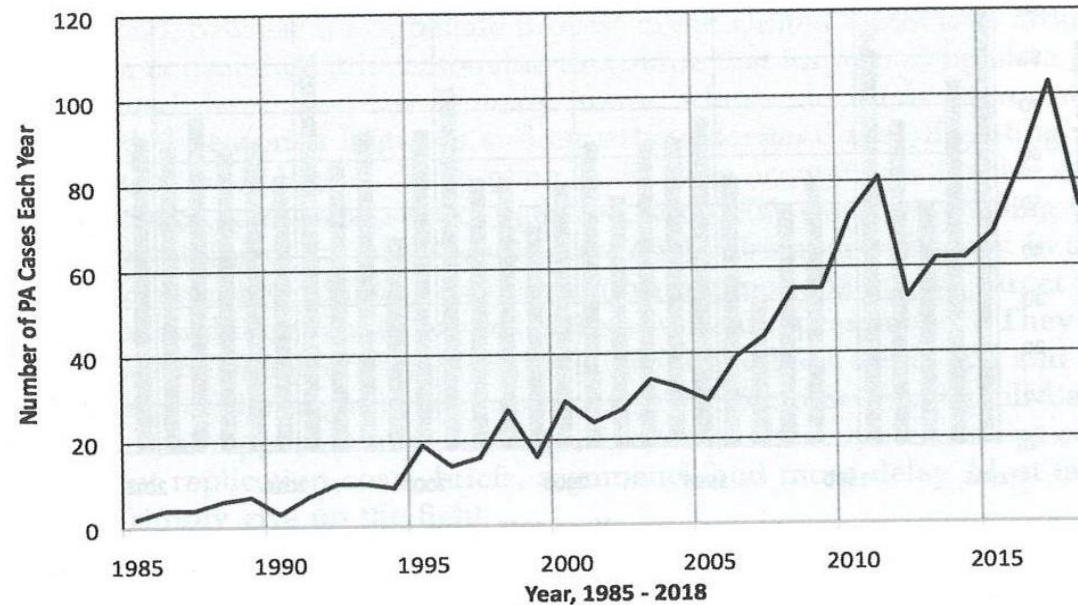
Parental Alienation: Science and Law



Parental Alienation: Science and Law, published in 2020.

PA Cases in U.S. Trial and Appellate Courts, 1985-2018

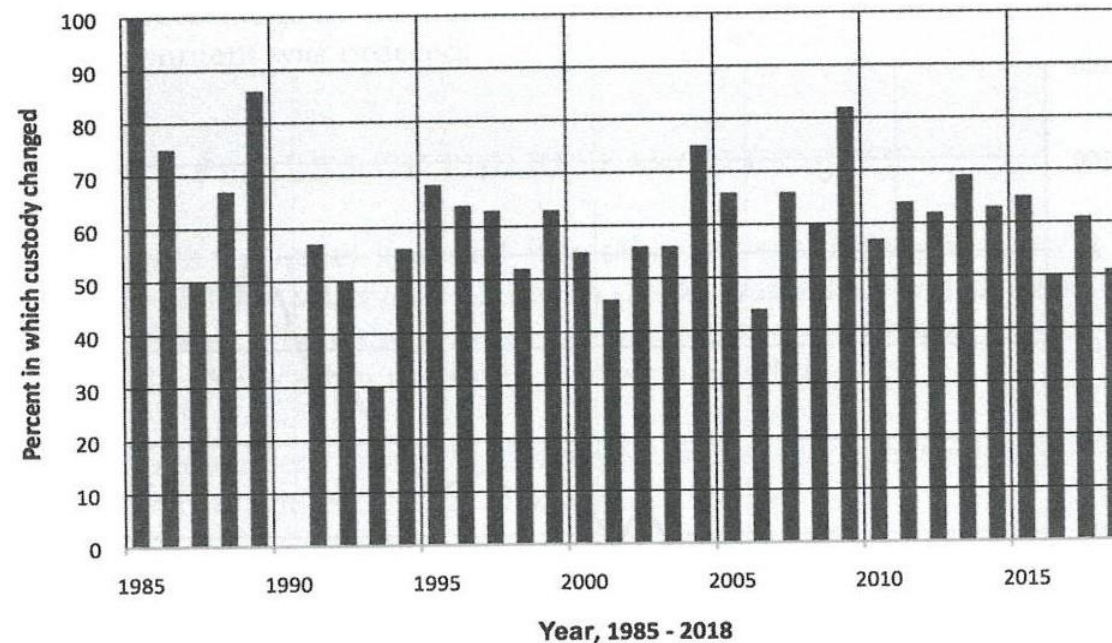
The number of cases each year has steadily increased over this period.



Demosthenes Lorandos, Parental Alienation in U.S. Courts, 1985 to 2018.
Parental Alienation: Science and law, 2020.

Percentage of PA cases each year, 1985-2018

Cases in which there was a significant change in the child custody arrangements. Overall, a significant change occurred in 61% of the cases.



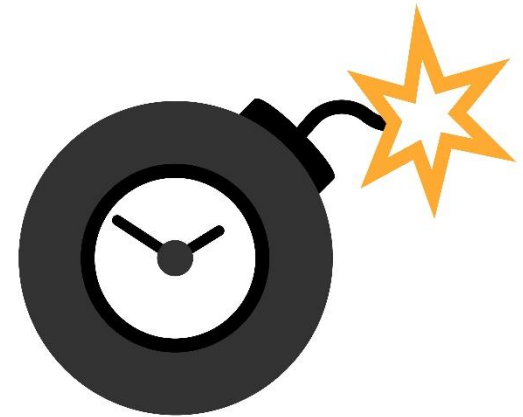
Demosthenes Lorandos, Parental Alienation in U.S. Courts, 1985 to 2018.
Parental Alienation: Science and law, 2020.

Practice Pointer

It is very important to ensure that you have adequate time at the trial to lay a proper foundation of expert testimony regarding parental alienation.

Do not skimp on the *voir dire* process. That would be a mistake that could damage your case.

You must ensure that scientific / professional literature is cited, referred to, and is incorporated in the expert testimony.



Parental Alienation or Domestic Violence?

A False Dichotomy

Binary Thinking: “Us versus Them” Mentality

Courts do not and should not ignore the evidence of DV. Nor do they ignore or should ignore the evidence of PA (or alienating behaviors). Both PA and DV are part of the equation that a family court is required to consider and evaluate when asked to rule in the best interests of a child. In fact, the issues of PA and DV are intertwined and must be carefully considered.

For instance, courts often utilize Dr. Amy J. L. Baker and her colleagues' **Five-Factor Model** as a methodology to determine whether a child who is aligned with one parent while rejecting the other has been alienated. It is only when all five factors are present that one can conclude that the child is alienated.

Factor 3 of this model requires that the now rejected parent did not engage in abuse, neglect, or demonstrate seriously deficient parenting of the type and magnitude that could reasonably be expected to cause a child to reject a parent.

“It is important to determine whether formal child abuse investigations concluded that the rejected parent had in fact engaged in any form of maltreatment.”

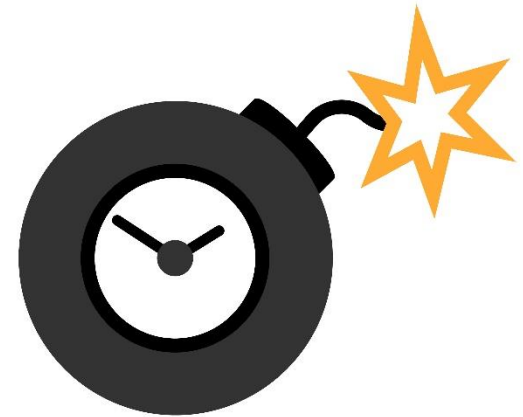
Dr. Amy J. L. Baker

Practice Pointer

DO NOT BE QUICK TO CONCEDE THE “HYBRID” ARGUMENT

It is important that you do not conflate
causation with *reaction*.

Just because there is bad or sub-optimal
behavior does not mean there is “abuse.”



**Parental Alienation is
Occurring in *this* case**

Five-Factor Model of Parental Alienation

1. The child avoids or rejects a relationship with one of the parents.
2. Prior positive bond between child and rejected parent.
3. Absence of abuse/neglect by rejected parent.
4. Alienating behaviors manifested by preferred parent.
5. Eight behavioral manifestations of PA by the child.

Factor Number One

- **Factor One:** The child actively avoids, resists, or refuses a relationship with a parent.
- Quantitative + Qualitative Analysis

Factor Number Two

- **Factor Two:** Presence of a prior positive relationship between the child and the now rejected parent.
- Helpful to determine the *proportionality* of the child's rejection of or resistance to a parent.

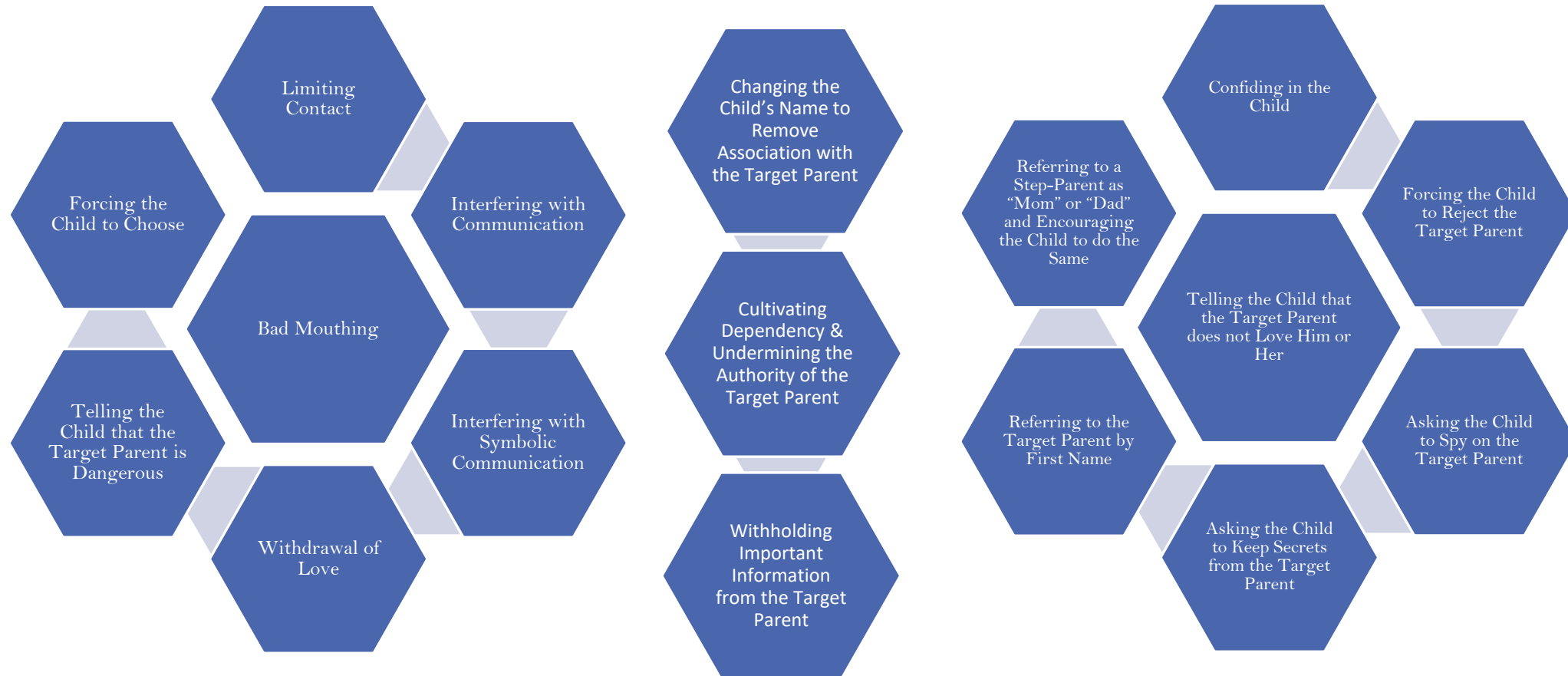
Factor Number Three

- **Factor Three:** Absence of abuse or neglect or seriously deficient parenting on the part of the now rejected parent.

Factor Number Four

- **Factor Four:** Use of multiple ABs on the part of the favored parent.

FINDINGS OF FACT THAT LED TO COURT INTERVENTION: **BEHAVIORS** OF AN ALIENATING PARENT



The Seventeen Behaviors of an Alienating Parent

Part One

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

The Seventeen Behaviors of an Alienating Parent

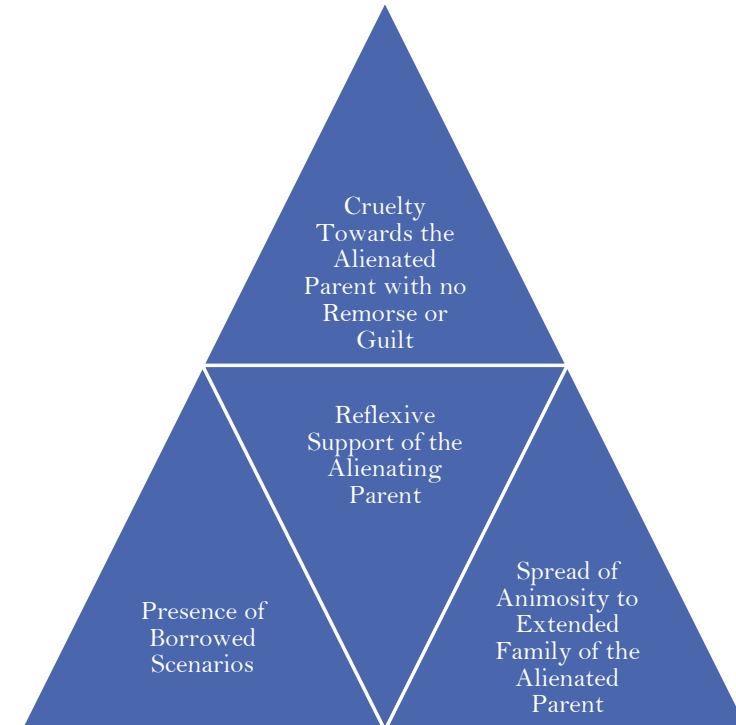
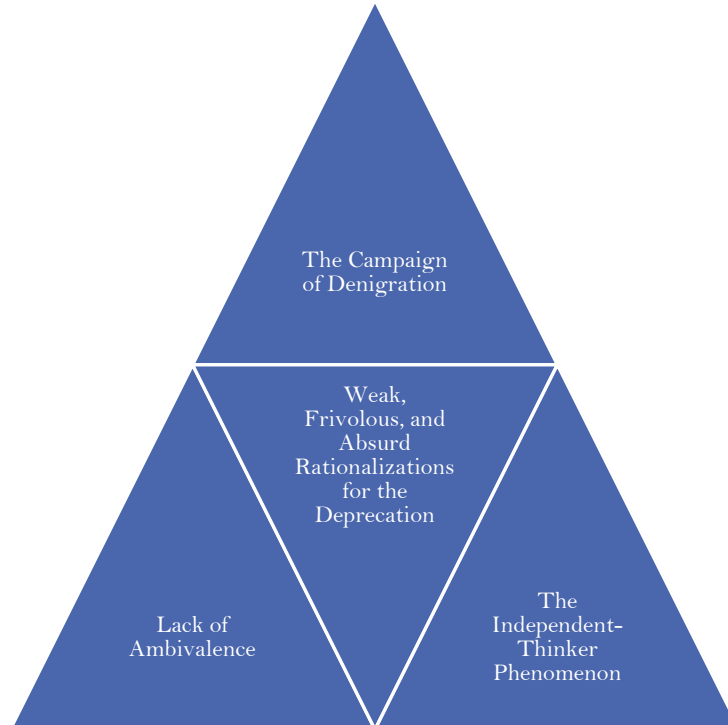
Part Two

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

Factor Number Five

- **Factor Five:** Exhibition of many of the eight behavioral manifestations of alienation by the child.

FINDINGS OF FACT THAT LED TO COURT INTERVENTION: 8 SYMPTOMS OF PARENTAL ALIENATION IN CHILDREN



The Eight Symptoms of Alienated Children

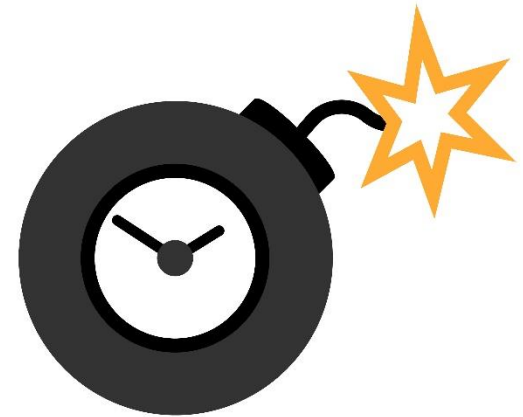
1. Campaign of Denigration
2. Weak, Frivolous, and Absurd Rationalizations for the Depreciation
3. Lack of Ambivalence
4. The Independent-Thinker Phenomenon
5. Cruelty Towards the Alienated Parent with no Remorse or Guilt
6. Reflexive Support of the Alienating Parent
7. Presence of Borrowed Scenarios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

Practice Pointer

The Five-Factor Model is not the only way to prove PA.

Nor is it always necessary to have an expert witness find PA in a case.

Don't shy away from the term "parental alienation."



The Children Need Proper Intervention

Early Intervention

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

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

Treatment Options: Abused Children vs Parental Alienation

- Treatment interventions differ when comparing PA cases with those involving abuse or neglect and it is important to rule out child maltreatment on the part of the rejected parent before making a decision of the treatment intervention.
- The treatment should be tailored to the cause of the ruptured or damaged parent-child relationship.
- If the rejected parent actually engaged in abuse or neglect of the child (not just alleged by the favored parent and/or child) then the appropriate treatment in such circumstances would be the one designed for abusive parents, not alienated parents.

Treatment Options: Abused Children vs Parental Alienation

➤ Abuse-specific treatment models

Alternatives for Families: A Cognitive Behavioral Therapy (AF-CBT) “are designed to decrease the reliance on punitive parenting styles of an abusive parent and increase the use of non-punitive behavior management strategies on the part of the parent, while simultaneously helping the child process the trauma from the abuse.” – Dr. Amy J. L. Baker

➤ Abuse-specific treatment model

Ill suited, if not catastrophically counter-productive, for alienation cases.

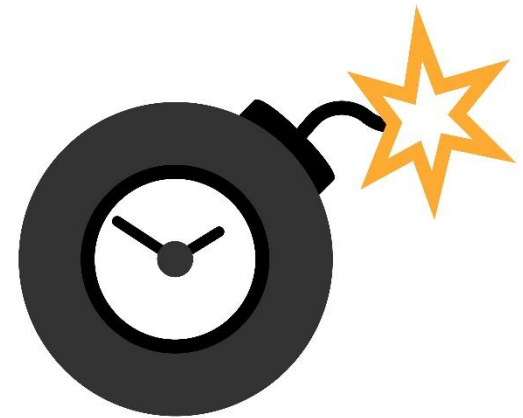
Practice Pointer

If you have a case of moderate to severe parental alienation, traditional psychotherapy will not work.

Reunification is not “therapy” and should not be considered as such.

Lay a proper foundation of expert testimony educating the court as to WHY a specialized intervention program is necessary.

And WHY a temporary no-contact order is necessary.

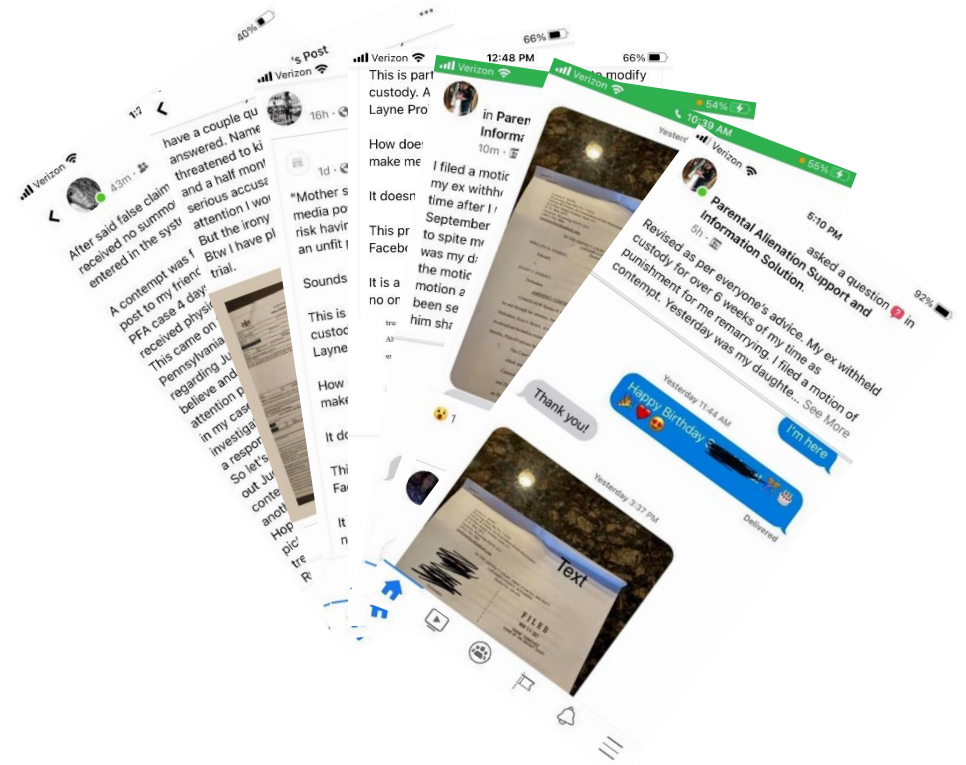


**What Parents Should
Not Be Doing While
Engaged in PA Cases**

Parents Disclosing Case Details on Social Media

Rejected parents sometimes turn to social media to vent their frustration.

BAD idea.



Why Credibility Matters

In a Nebraska case, the district court modified custody of minor child to award sole legal and physical custody to the father. Mother appealed and appellate court affirmed the district court's decision. One of the leading factors in this decision was the mother's credibility.

State on behalf of Pierce K v Jacob K, No. A-20-627, 2021 WL 1100129, (Neb Ct App, March 23, 2021)

Why Credibility Matters

In another Nebraska case, mother appealed after the district court denied her three applications to hold father in contempt. Key issue was the mother's credibility and the weight given to her testimony by the court.

JACQUELINE E, APPELLANT, V RYAN E, APPELLEE, No. A-20-740, 2021 WL 1259167, (Neb Ct App, April 6, 2021)

**Common
Myths & Fallacies
of Parental Alienation**

Debunking Some Myths and Fallacies

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

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

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

Confronting Misinformation

Courts rarely believe victims of DV and child abuse.

Recently, in a **peer-reviewed** article published by the American Psychological Association, Dr. Jennifer Harman and Dr. Demosthenes Lorandos exposed the serious conceptual and methodological problems of a study that had misrepresented the research pertaining to parental alienation and was plagued with confirmation bias.

Harman, J. & Lorandos, D. (2020). Allegations of family violence in court: How parental alienation affects judicial outcomes.

Psychology, Public Policy, & Law. DOI: [10.1037/law0000301](https://doi.org/10.1037/law0000301)

PA is a form of Family Violence

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

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

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