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Claremont McKenna College

Considering Parental Alienation When Assessing Best Interest of the Child

Submitted to

Professor Tomoe Kanaya

By

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For

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CONSIDERING PARENTAL ALIENATION

## CONSIDERING PARENTAL ALIENATION

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## CONSIDERING PARENTAL ALIENATION

### Abstract

As the divorce rate in the United States remains steady at 50%, the last few decades have shown an increase in child custody disputes. Within these litigations, interparental conflict can reach high levels and incite behaviors that wreak havoc on the children who are caught in the middle. When considering custody arrangements, judges and other evaluators use the Best Interest of the Child Standard (BICS), a jurisdictionally-specific framework that examines several factors that contribute to a child's health and well-being. Parents who allow their resentments to get the better of them sometimes engage in behavior that encourages their child to become alienated from the other parent, known as Parental Alienation (PA) —a form of psychological abuse that can result in emotional and behavioral consequences for the child. While some states investigate components relevant to PA during a BICS evaluation, none include criteria that directly addresses this construct. Therefore, to achieve the intended outcome of BICS, which is to create a custody arrangement that will best meet a child's needs, recognizing and addressing the presence of PA within a family system is required.

*Keywords:* Parental Alienation, Parental Alienation Syndrome, Best Interest of the Child, High-conflict divorce, Contested custody

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### Considering Parental Alienation When Assessing Best Interest of the Child

“Divide the living child in two, and give half to the one, and half to the other.”

—King Solomon (*1 Kings 3:25*)

It is a problem that dates back to biblical times. Two women came before King Solomon and both claimed to be the mother of one child. Having no way of knowing who the natural mother was, the king announced that he would resolve the issue in the only way that seemed fair—by splitting the baby in half. As barbaric as this may seem, King Solomon knew that he would never have to commit this act because the mere threat of it would bring the real mother forward. He understood that a true parent would do anything, including give up their custodial rights, to protect their child from harm. Unfortunately, the clarity of the message in the story of King Solomon’s sword is often clouded by the murky waters of modern-day custody battles. When faced with the reality of diminished time with their children due to marital or other relational separation, parents may resort to “dividing the child in two.” In other words, they may engage in extreme measures to gain more custody of their children and lose sight of the effects it can have on their children.

Today, in the United States, approximately 50% of marriages end in divorce (NCHS, n.d. -a; NCHS, n.d. -b). In cases that involve children, 20% are considered high-conflict, defined as repeated motions before the court to modify custody and/or enforce parenting practices and visitation (Baker, Asayan, & LaCheen-Baker, 2016). While contested custody cases typically involve some level of anger and hostility, those engaged in high-conflict battles are more susceptible to engaging in contentious behavior and emotional warfare. Although both parents love their children, expressed resentment towards one another can be interpreted as demand for loyalty, thus putting children in a

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difficult position. As they struggle to understand the family's disintegration and adjust to a new reality, a child's natural inclination to want to please and support a parent in distress is exploited by that parent's encouragement (or lack of prevention) of bitterness towards the other parent. This kind of manipulation, known as Parental Alienation (PA), and its negative impact on children is considerable and well-researched.

Numerous studies suggest that children who are exposed to PA experience increased levels of anxiety, depression, hostility, resistance to authority, and instigation of peer conflict (Aloia, & Strutzenberg, 2018; Afifi, & Schrodt, 2003; Amato, & Afifi, 2006; Schrodt, & Shimkowski, 2013; Kelly, & Johnston, 2001). Although poor academic performance, behavioral issues, low self-esteem, distress, and maladjustment are often associated with divorce (Clarke-Stewart, Vandell, McCartney, Owen, & Booth, 2000), children who are victims of alienating parents are especially challenged in these areas. In fact, research on child development has established that the specific type of behaviors that alienating parents engage in are the kind of expressions of inter-parental conflict that are most likely to be harmful to children (Verrocchio, Baker, & Marchetti, 2017). This is troubling to consider when approximately 1% of children and adolescents in the United States are exposed to PA (Bernet, Von Boch-Galhau, Baker, & Morrison, 2010). Therefore, in the best interest of the child, the presence of PA must be assessed when making custody decisions.

In this paper, I will outline the historical and current standards for custody determination in the United States, how it is applied, and its strengths and weaknesses. I will discuss high-conflict divorce and custody disputes, and explore its problematic subculture of PA, a dysfunctional family dynamic with potentially devastating



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consequences. I will argue that the negative impact of PA on children warrants serious consideration, and that its presence within a family system should be identified and addressed when determining custody arrangements that are in a child's best interest.

### **The History of Child Custody in the United States**

Prior to the 19<sup>th</sup> Century, children were considered to be the property of their father, and therefore it was up to him to decide where the children would reside after a divorce (Krauss, & Sales, 2000). As time went on, the perspective on child custody began to change and priority shifted from parental rights to what would be best for the children (Krauss, & Sales, 2000). The first incarnation of this idea was the Tender Years doctrine, which held that children in their "tender years" (originally defined as up to age 7 but later expanded) needed the love and affection of their mother above all else (Baker et al., 2016). Under this presumption, children of divorce were almost automatically placed in the exclusive care of their mother, granting fathers "reasonable visitation" (Warshak, 2015). In the absence of a concrete and legally binding schedule, this ruling left the frequency and consistency of a father's time with his children in the hands of his ex-wife; a situation ripe for contention that could leave kids uncertain about when and how often they would get to see their dad (Warshak, 2015).

As the divorce rate in the United States grew steadily between 1867 and 1967 (National Center for Health Statistics, 1973)<sup>1</sup>, attitudes towards custody began to shift again. Because of its gender bias, there was a growing concern about the constitutionality

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<sup>1</sup> With the exception of a spike after World War II and a dip during the Great Depression.

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of the Tender Years doctrine. Furthermore, the idea that mothers did not hold the monopoly on good parenting (Warshak, 2015) has been seeping its way into the courtroom as early as 1925 (Pruett, Hoganbruen, & Jackson, 2000). However, it wasn't until 1970 when the Uniform Marriage and Divorce Act (UMDA), amended in 1973 and renamed Marriage and Divorce Act Model in 1996 (National Conference of Commissioners on Uniform State Laws, 1973), drastically changed the way custody was evaluated.

### **The Best Interest of the Child Standard**

The UDMA, which aimed to streamline state laws on marriage and divorce, introduced a framework in which custody was determined by the arrangement that would be in the child's best interest. The Best Interest of the Child Standard (BICS) encouraged a number of factors associated with a child's overall health and well-being be considered. Rather than prioritizing one parental relationship over another, BICS shifted the evaluation process to a more comprehensive assessment of the child's holistic needs, including the custodial wishes of the parents and the child; the child's relationship with each parent, sibling, and other important figures; the child's adjustment to home, school, and community; and the mental and physical health of all individuals concerned (National Conference of Commissioners on Uniform State Laws, 1973). Since its introduction, using BICS to evaluate custody has replaced the Tender Years doctrine in all 50 states (Child Welfare Information Gateway, 2016). Ironically, however, because BICS is an overarching framework and not a default ruling, it has led to less uniformity among states as to how custody is determined.

### **Child Custody Presumptions**

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Although every state has its own laws, in general, there are four ways in which custody is arranged: physical, legal, sole (primary), and joint (shared). While physical custody refers to the amount of time spent with a child, legal custody addresses the decision-making responsibilities regarding the child's health, education, and welfare (California Courts, 2018). Physical custody can be either sole or joint, with sole physical custody defined as any parent who is physically responsible for a child the vast majority of the time (usually more than 60%), and joint physical custody referring to a closer approximation of a 50/50 split in physical childcare (California Courts, 2018). Legal custody is also qualified as sole or joint, however, it is not necessarily related to the physical custody arrangements. A parent who does not have joint physical custody can have joint legal custody. This means that even though a father may only see his child every other weekend, they can have equal rights and responsibilities in making medical and educational decisions about that child. Therefore, parents fighting for custody may be seeking a change in physical time with their child, decision-making authority, or both.

Using BICS as a foundation, there has been a number of attempts to simplify custody decisions through uniform legal presumptions, or default rulings. One attempt was the primary caretaker presumption, which automatically awarded custody to the parent who had acted as the child's primary caregiver during the marriage (Kohm, 2008). Although gender was technically not a factor in this presumption, the continued status quo of male and female roles in the workplace and home respectively, still often resulted in custody favoring the mother. Another attempt was the psychological parent rule, which argued that custody should be based upon the level of psychological attachment a child has to their parents (Krauss, & Sales, 2000). Under this presumption, custody would be

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awarded to the parent who provided the most stability, emotional support, and affection. However, lack of empirical evidence to support this theory prevented it from being generally accepted (Krauss, & Sales, 2000). Nevertheless, although the primary caretaker presumption and the psychological parent rule are not widely used, the notion that one parent may take a more active role in caregiving or that a child may feel more bonded to one parent, are often factors considered when determining BICS in many states.

Currently, there is not a uniform presumption for child custody across all states. In many states, like California, there is a joint custody presumption. This means that both parents are presumed to be physically and mentally fit to fulfill their childcare responsibilities, and therefore awarded joint physical and legal custody of their children (California Courts, 2018). Exceptions include parents with a documented history of violence, substance abuse, reckless behavior involving the children, or parental neglect. In these cases, the other parent may be automatically deemed more fit and granted sole physical custody. In other states, like New York (New York State Unified Court System, 2017), priority is often given to the parent who has been the main caregiver and/or nurturer of the child, which closely resembles the primary caregiver presumption. In all states, however, any parent who is not satisfied with the court's initial ruling on custody has the right to contest it.

### **When and How BICS is Applied**

Although BICS is at the root of all custody determination, a thorough examination of the individual needs of a child is typically only conducted if the initial custody arrangement is contested (Kelly, 1997). If parents are in agreement with the default ruling of the state, no further evaluation is ordered. However, as Baker et al. (2016) points out,

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approximately 20% of divorces that involve children are considered high conflict, and therefore require the intervention of a judge to resolve custody issues. It is through this process that judges and other evaluators use BICS as a guide to assess the role that family dynamics, school and home environment, and other relevant factors play in a child's overall well-being. These variables may be analyzed through in-person interviews, depositions, psychological assessments, reviewing mental and physical health records, report cards, arrest records, employment history, and financial documents (Ackerman, & Pritzl, 2011). Although the depth of BICS evaluations will vary, cases involving child abuse, domestic violence, history of criminal behavior or substance abuse will often be the most exhaustive.

Because BICS is not a static protocol but rather a multitude of different guidelines specific to its jurisdiction, factors that affect final custody decisions vary from state to state (Krauss, & Sales, 2000). While the four original areas proposed by the UMDA are usually present (i.e., the custodial wishes of the parents and the child; the child's relationship with each parent, sibling, and other important figures; the child's adjustment to home, school, and community; and the mental and physical health of all individuals concerned), most states have expanded their BICS criteria. These additions include the age of the child; the child's history of abuse or victimization; special educational, mental health, or medical needs of the child; the parents' level of hostility, including any history of spousal or family violence; strength and weaknesses of parenting skills, including individual ability to care for the child; and the economic status and stability of the parents (Child Welfare Information Gateway, 2016). Therefore, the BICS criteria used to

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determine custody arrangements will depend on the jurisdiction in which custody is being litigated.

The broad nature of BICS allows for a wide interpretation of its criteria. According to Kelly (1997), parents fighting for custody will often present evidence to support three key concepts: continuity, stability, and parental involvement. However, a problem arises when these terms take on different meanings in different contexts. For example, while continuity can generally be thought of as “a state of stability and the absence of disruption” (Continuity [Def. 1.1], n.d.), the nature of divorce typically results in some disruption of a child’s day-to-day routine. Therefore, the term cannot be defined in the same way as it was when the family was intact. In this new context, continuity would be how many aspects of a child’s life *before* the divorce can and should remain constant *after*. Stability also takes on several meanings. Often argued as a child’s need for a home base, emphasizing residential stability (Kelly, 1997), there is insufficient evidence to support that it is essential for good child development (Dupaix, 1987). As Kelly (1997) notes, stability can also be achieved through reliable and responsive relationships with the child’s caretakers. These differing perspectives suggest that the concepts in BICS are in need of further clarification.

In addition to the wide range and interpretation of BICS criteria, there is no standard procedure for assessing or measuring its factors. While courts are given the power to interview children and/or seek advice from appointed evaluators (Uniform Law Commission, 2018) there is little information about how these interviews or evaluations should be approached or analyzed. The American Psychological Association (2010) provides a guideline for mental health professionals, but it does not include specific

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questions, nor a system for coding and interpreting information. The Association of Family and Conciliation Courts (2006) also issued a best practices guide, which states that custody evaluators should use multiple, empirically-based methods and procedures for collecting data, but it fails to specify what data collecting tools are recommended or available. Although there are some tools designed to measure BICS (Emery, Otto, & O'Donohue, 2005; Ackerman, & Pritzl, 2011; Kalverboer et al., 2012), many have been criticized for lacking construct validity (Emery et al., 2005). Regardless, there is no evidence of any uniform practices within the field of child custody evaluation. Therefore, to increase the reliability of the standard, more research is needed to determine the best methods of assessing its various constructs.

### **The Strengths and Weaknesses of BICS**

Regardless, using BICS in custody evaluations has several advantages. First, it asks decision makers to consider what a child's specific needs are at a specific point in time, given the changing structure of their family (Kelly, 1997). By considering each child's situation on a case-by-case basis, rather than a one-size-fits-all approach, the process remains flexible and adaptable (Warshak, 2011). Its multidimensional framework has the potential for being comprehensive and personalized, laying the groundwork for a custody arrangement where a child's needs can best be met. Ideally, evaluators using BICS will consider the physical, emotional, intellectual, developmental, and financial contribution of each parent; thus, creating opportunities for the child to build separate but potentially equally strong relationships with both.

Additionally, this gender-neutral approach of BICS levels the playing field for parents who wish to expand beyond the more traditional maternal/paternal roles. The

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overall increase of women with children under the age of 18 entering the workforce since 1950 shows that these norms are being redefined (U.S. Department of Labor, 2017). In fact, as of 2018, 49% of workers in the United States are now women (Bureau of Labor Statistics, 2018). Conversely, men seem to be taking a more active role in child rearing, with the number of stay-at-home fathers nearly doubling between 1989 and 2012 (Livingston, 2014). By recognizing the importance of the mother-child and father-child relationship, BICS creates space for parents to take equally active roles in child-rearing and financial support.

On the other hand, critics of BICS argue that its vagueness leaves outcomes of custody evaluations vulnerable to abuse by biased judges and agenda-driven parents (Baker et al., 2016). As Kohm (2008) points out, litigators and other advocates do not have concrete laws to fall back on when trying to combat prejudices. There are also no guidelines as to which, if any, aspects of BICS should be more heavily weighted than others (Baker et al., 2016) or if all elements need to be considered when doing an evaluation. Finally, since family situations are complicated and nuanced, BICS lacks guidance in how to deal with challenges, such as conflicting factors within parental characteristics. As Dupaix (1987) notes, it can be hard to decipher what is best for a child when each parent meets some of the criteria but neither meets enough to make a clear distinction as to how custody should be arranged. Such challenges make custody rulings tricky and complicated feats, often with no clear right answer. Nevertheless, a better alternative is yet to be presented. Although there are several schools of thought (Mnookin, 1975; Neely, 1984; Schneider, 1991; Becker, 1992; Kruk, 2012), none offer a



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clear solution for reconciling each parent's desire to spend as much time as possible with their child.

Unfortunately, these debates and lack of uniformity of BICS can further aggravate parents already emotionally strained by the psychological and legal challenges of separation. If high levels of contention or desperation develop, parties may resort to extreme strategies to gain sole custody of their children. These include manipulating children into rejecting the other parent (Baker, & Eichler, 2016) by exhibiting behaviors such as withdrawing love or getting angry if the child expresses positive regard for the other parent, telling the child that the other parent does not love them, or telling the child that the other parent is dangerous (Baker, & Darnall, 2006). These behaviors constitute PA, and can have a profound effect on children, sometimes referred to as Parental Alienation Syndrome (PAS). In the following sections, I will further define PA and PAS, and explain how these phenomena can emerge within the context of high-conflict divorce and contested custody disputes. I will outline the empirical research on the impact that PA has on children and discuss the challenges it presents when assessing BICS.

### **Parental Alienation and Parental Alienation Syndrome**

The presence of PA has largely emerged as a result of high-conflict divorce and the growing number of contested child custody cases (Gardner, 1985). A concept that has been taking shape over the last 40 years, Warshak (2001) defines PA as a process of psychological manipulation of a child by a parent intended to exclude, isolate and ostracize the other parent. During this process, the Alienating Parent (AP) exposes the child to an ongoing defamation of the Targeted Parent (TP) (Ben-Ami, & Baker, 2012), which can lead to a host of psychological, behavioral, and physiological consequences for

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the child (Aloia, & Strutzenberg, 2018). Gardner (2002) perceives PA through the lens of the effect it has on the child, defining it as any number of symptoms associated with a child's alienation from a parent. While Gardner focuses on the effect of alienation on the child, the field has generally come to favor Warshak's definition, which focuses on the behavior of the AP. Either way, PA can be thought of as a child's exposure to negative messages, direct and indirect, about a parent, which may cause that child distress.

Within the rubric of PA, PAS refers to a specific cluster of symptoms exhibited by a child who has been alienated (Gardner, 1985). Different from normal anger and confusion about parental separation, PAS is defined as a child's unjustified campaign of denigration against a parent, resulting from a combination a parental manipulation and the child's own contributions to the hatred of the TP (Gardner, 1998, as cited in Baker, 2007). Gardner (2001) identifies this condition using the presence or absence of eight criteria, as well as the level in which they are exhibited, which determines whether the case is mild, moderate, or severe (Gardner, 1991). While it is not uncommon for children of divorce to have hostility towards one parent, especially if they believe that parent is responsible for the family's disintegration, the differentiating factor of PAS is that the child's contempt is unjustified. Therefore, in cases of abuse or neglect, where a parent has exhibited signs of violence, substance abuse or engaged in other alienating behaviors (i.e., narcissism, antisocial personality), the child's hatred towards that parent does not qualify as PAS (Gardner, 2002).

While PA and PAS are sometimes used interchangeably, they are not the same. PA is a parent's alienating behavior towards the child for the purpose of harming the relationship with TP (Gardner, 1998, as cited in Ben-Ami, & Baker, 2012), while PAS is

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an extreme form of the resulting alienation that the child experiences. In other words, PAS only occurs when the AP's strategies have been successful (Turkat, 2002). In essence, PA can be used to describe any number of negative behaviors from a parent that promotes their child's resentment, detachment, or estrangement from the other parent. While, PAS is a child's acute reaction to these behaviors that leads to a variety of short- and long-term consequences for the child and the TP's relationship. Although these are clearly distinct, for the purposes of this paper, I will use PA to encompass both the behavior of the AP and the resulting symptoms seen in the child.

### **Signs and Symptoms of Parental Alienation**

Due to the acrimonious nature of custody disputes, it may be tricky to decipher PA from normal tension within a family going through such changes. One approach to recognizing PA is through the behavior of the AP. In a study of adults who self-identified as having been exposed to PA as a child, Baker and Darnall (2006) pinpointed 12 common alienation strategies used by APs on their children. Similar behaviors also emerged from López, Iglesias, & García's (2014) study, as well as six additional strategies that were commonly mentioned. Together, the following is a list of prevalent tactics used by APs that should be considered indicators of PA:

1. General bad mouthing of the TP.
2. Limiting contact between the child and the TP.
3. Withdrawing love/getting angry if child showed positive regard for the TP.
4. Telling the child that the TP does not love them.
5. Forcing the child to choose between his/her parents.
6. Telling the child that the TP is dangerous.

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7. Confiding in the child about the marital relationship and/or issues regarding custody.
8. Limiting mention and photographs of the TP.
9. Forcing child to reject the targeted parent.
10. Limiting contact with/ belittling extended family of TP.
11. Belittling targeted parent in front of child.
12. Inducing conflict between child and TP.
13. Rewarding disrespectful behaviors in the child towards the TP.
14. Interrogating the child after visits to the TP.
15. Punishing child for contacting the TP.
16. Deteriorating the image of the TP and their new partner.
17. Encouraging the children to challenge or defy the TPs rules and authority.
18. Inducing a reversal of roles, promoting parentification.

In addition to PA strategies used on children, López, et al. (2014) identified four behaviors that APs practice on adults. These include failing to give the TP information about the child, making decisions that involve the child without consulting the TP, seeking out alternative caregivers for the child rather than asking the TP, and finding a new partner, friend, or extended family member to join them in alienating behaviors. Although not an exhaustive list, the above-mentioned strategies highlight AP behaviors that were most frequently described by participants of these studies, all of whom felt they had been alienated by a parent (Baker, & Darnall, 2006; López et al, 2014).

Another indication that PA is present can be seen within the behavior of the child. According to Gardner (1998, as cited in Baker, & Darnall, 2007), children who have been

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successfully alienated may exhibit any of the following eight behaviors: Campaign of denigration of the TP, unsubstantial reasons for hating the TP, a lack of ambivalence towards the TP, denying influence by the AP, lack of guilt or remorse about their feelings or behavior, siding with AP in parental conflicts, using language or phrasing borrowed from the AP, and rejecting the extended family of the TP. Unlike the list of AP behaviors mentioned above, the symptoms within children that Gardner describes are broad and leave a lot of room for interpretation. For this reason, Gardner feels that at least four of the eight symptoms must be present within a child for it to indicate that PA is a factor. Nevertheless, a child exhibiting any of the aforementioned behaviors warrants a closer look by custody evaluators.

### **The Impact of Parental Alienation on Children**

While separation is troubling for almost all children, high levels of inter-parental conflict can contribute to these negative effects. As Ben-Ami and Baker (2012) note, the level of expressed acrimony between parents during and after separation is found to be the single best predictor of post-divorce outcomes for children. The age of a child plays an important role in how they may process parental separation, and their vulnerability to any subsequent alienating strategies. According to Rand (1997b; Johnston, 1993) children under the age of six tend to exhibit loyalty to whichever parent they are in the physical presence of, while those over seven years often form stronger alignments with APs in an effort to resolve their loyalty conflicts. This tendency increases once a child reaches adolescence. In fact, Wallerstein and Kelly (1980, as cited in Kelly, & Johnston, 2001) once defined PA as a pathological alignment between an angry parent and an older child as a result of divorce. This pattern could be attributed to the emotional and behavioral

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issues associated with this stage of development (McCrae et al., 2002). Sometimes referred to as the period of “storm and stress” (Arnett, 1999), adolescence is rife with parental conflict, risk taking, and sensitivity to moods and emotions (McCrae et al., 2002). Therefore, children between the ages of 12 and 18 may exhibit unjustified animosity and negativity towards a parent without the presence of alienating behaviors by the AP (Kelly and Johnston, 2001; Johnston, 1993). Nevertheless, further investigation should be conducted to determine whether PA has been a contributing factor to any child’s unjustified hostility towards a parent.

Because PA can severely damage a child’s relationship with the TP, it can interfere with the TP’s ability to parent effectively (Balmer, Matthewson, & Haines, 2018; Johnston, 2003), and lead to long-term consequences for the child. In mild cases, the child may not obey or respect the TP’s rules and boundaries. In more severe cases, where allegations of abuse have been made and the courts are involved, TPs may find themselves feeling as if they are walking in eggshells around their children, uneasy about disciplining them at all. In fact, successful alienation can sometimes result in a child’s outright refusal to spend time with the TP, diminishing or even completely eliminating contact with them (Balmer et al., 2018; Bernet et al., 2010; Garber, 2011). This disruption in the parent-child relationship produces poor outcomes for children. Research on the long-term effects of inadequate parenting show that children exposed to parental indifference and insufficient parental control have increased rates of depression in adulthood (Bifulco, Brown, & Harris, 1987). Furthermore, studies on early indicators of psychopathology suggest that young children who experience inconsistent parental discipline and disrupted family bonds are at a greater risk for developing life-course-

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persistent antisocial behavior (Fisher, & Brown, 2018; Moffitt, & Caspi, 2001; Feehan, McGee, Stanton, & Silva, 1991). Therefore, while an AP may be pleased with their child's rejection of the TP in the short term, dilution or decimation of a TP's authority as a parent is ultimately to the detriment of the child.

Unfortunately, there is further evidence to suggest that the impact of PA can linger on long past the formative years. In their 2012 study, Ben-Ami and Baker measured self-sufficiency and well-being in adults who identified as having been exposed to PA as a child. Overall, participants were found less likely to have completed four years of college, be employed or in school, and more likely to score in the bottom third of the self-sufficiency. They were also more likely to suffer from low self-esteem, anxiety, and depression. Not given the space to develop their own emotional identity, child victims of PA struggle with autonomy, adverse self-evaluation, social isolation, and higher rates of relational dissatisfaction (Aloia, & Strutzenberg, 2018; Leary & MacDonald, 2003; Dumont & Provost, 1999; Murray, Derrick, Leder, & Holmes, 2008). These outcomes point to the long-term toxicity of PA and support the importance of identifying and addressing it early on.

Another study showed a significant correlation between exposure to PA and substance abuse, citing approximately one-third of participants reporting serious problems with drugs and/or alcohol at some point in their lives (Baker, 2005a). As Baker and Ben-Ami (2011) note, the self-medication model of addiction supports the theory that people abuse drugs and alcohol to cope with pain—especially the kind associated with self-hatred and low self-esteem (Khantzian, 1985). These outcomes are not surprising considering the evidence to support that PA promotes an unhealthy parent-child

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relationship with the AP, one that requires strict and expressed loyalty at the child's expense (Aloia, & Strutzenberg, 2018; Baker, 2005b). Overall, the evidence on the impact of PA on children suggest that the effects start early, remain impactful, and without intervention, compound over time (Verrocchio et al., 2017).

### **Identifying Parental Alienation Within BICS**

Despite the growing body of research on PA, the current awareness about the pervasiveness of this behavior among judges, social workers, child welfare agencies, and family lawyers is unclear. While some report knowledge of PA, there is no consensus on how important its assessment is when determining custody (Baker, 2007). However, in the interest of BICS, it is crucial that indications of PA are factored into evaluations. Otherwise, BICS is not accomplishing what it intends—to support the overall well-being of the child.

One major challenge of identifying PA during the course of a custody evaluation is that BICS does not directly address the construct (Baker et al., 2016). However, there are some areas within the standard where signs of PA could emerge. One area is the custodial wishes of a child— a factor of BICS in more than 12 states (Child Welfare Information Gateway, 2016). These jurisdictions will allow a minor above a certain age (usually 12-14 years) to address the court regarding his or her wishes for custody or visitation (California Legislative Information, 2010). Since most children would probably feel hesitant to publicly express a preference for one parent over another, investigating the reasons behind the the child's wishes may be important in determining whether PA is a factor.



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Another area that BICS examines is the child's relationship with each parent. It would seem that evaluating this construct could reveal if PA is present. However, if alienation has been effective, then the child's relationship with the TP has been compromised. In these cases, the parent-child relationship may be assessed as poor, when in reality, the TP has been a loving and reliable caregiver. This poses the question of whether the state of the relationship, as measured in BICS, is dictated by the efforts of the parent or the feelings of the child. Ideally, it should be determined by a combination of both, but if PA is a factor then this construct cannot be accurately measured.

A third area of BICS where PA could be assessed is the evaluation of the mental and physical health of all individuals concerned. Unfortunately, more than in any other construct of BICS, this intersection of psychology and law can be problematic. Since research suggests that parents who engage in alienating strategies often struggle with certain types of mental illness (Johnson, 1999, as cited in Rand, 1997a), a psychiatric evaluation should be ordered if PA is suspected. However, despite efforts to get a diagnosis of PA into the Diagnostic and Statistical Manual (DSM) (Bernet, 2008; Bernet et al., 2010), it has yet to be recognized as a disorder. Regardless, there is sufficient evidence of the negative impact of PA on children that the lack of a clinical diagnosis should not be relevant when determining BICS. Rather, PA only needs to be identified as an indicator of poor family dynamics—which should be a concern to those evaluating custody.

### **Methods of Assessing Parental Alienation**

Although there has been considerable research to support the phenomenon and effects of PA, there are limited studies on reliable and valid methods of assessing it.

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However, a few tools have been created. The Baker Strategy Questionnaire (Baker, & Ben-Ami, 2011) is a 20-item measure that assesses the presence of 19 specific AP behaviors and one general behavior that parents might use to induce a loyalty conflict in their child. The Relationship Distancing Questionnaire (Moné & Biringen, 2006) examines a child's feelings of negativity without guilt towards each parent, their complaints about and avoidance of each parent, their level of rejection of each parent, parents' bad-mouthing of each other, and other factors. The Rowlands' Parental Alienation Scale (Rowlands, 2018) looks at six of Gardner's (1998, as cited in Baker, & Darnall, 2007) eight symptoms of PA in children, from the perspective of the TP. However, it appears these are the extent of the tools available to directly assess PA, none of which are used by field professionals at any reportable rate.

There are other tools commonly used by custody evaluators that address PA indirectly. The Children's Perception of Interparental Conflict Scale (Grych, Seid, & Fincham, 1992) asks children 48 questions about how they perceive their parents' level of conflict. The Parent/Child Relationship Inventory (Gerard, 1994, as cited in Coffman, Guerin, & Gottfried, 2006) aims to reveal how parents feel about their children and the task of parenting. It uses 78 items across seven scales: Parental Support, Satisfaction with Parenting, Involvement, Communication, Limit Setting, Autonomy, and Role Orientation. The Parenting Stress Index (Abidin, 1983, as cited in Loyd, & Abidin, 1985) can also be used to identify problems within the parent-child relationship. If abuse has been alleged, the Child Abuse Potential Inventory (Milner, 1986, as cited in Laulik, Allam, & Browne, 2015) is designed to detect the presence of physical child abuse from parents or primary caregivers. Gardner (1992, as cited in Faller, 1998) also created an

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assessment tool, the Sexual Abuse Legitimacy Scale, specifically geared towards cases where severe PA is suspected. The goal of the 84-question measure is to discern between true and false claims of sexual abuse. However, it has been criticized for being biased towards one scenario—a mother accusing a father of abusing their child (Faller, 1998). While these tools are useful for assessing various components of BICS and could possibly reveal the presence of PA during an evaluation, a more direct method of specifically assessing PA is needed.

### **What Custody Evaluators Should Know**

The intersection of psychology and the law can be a rocky terrain, and child custody determination is no exception. Despite the general agreement that decisions should be made with the child's best interests in mind, cohesiveness in the field all but ends there. Not only does BICS criteria vary from state-to-state, but the specific elements within the criteria that are considered vary among judges. When it comes to PA, there is a divide among mental health professionals and custody evaluators on how much credence it deserves. While some advocate for the recognition of PA, others feel there is not enough scientific evidence to support it (Pepiton, Alvis, Allen, & Logid, 2012; Bruch, 2002; Faller, 1998; Myers, 1990). For decisions as important as a child's well-being, it is difficult to comprehend that the BICS process can be so unclear, devoid of structure, and vulnerable to chance.

If PA is identified during the course of a custody evaluation, more clarity is needed on how it will be treated. While the courts can order an AP to attend parenting and/or anger management classes, even therapy, there are often no concrete consequences attached if the order is not adhered to (Turkat, 1994). This can be frustrating, especially if

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the custody agreement includes a non-disparagement clause explicitly instructing both parents to refrain from speaking ill of each other in the presence of the child (Judicial Council of California, 2016). Warshak (2001) suggests that sanctions similar to those imposed on a parent who fails to pay alimony or child support should be established. These include fines, community service, driver license suspension, house arrest, and even short-term incarceration. While a court order implies that a lack of compliance has consequences, in order to effectively combat PA, it is crucial that these consequences are solidified, made clear to all parties, and delivered when necessary.

Depending on the severity of PA in a case, judges may have increasingly tough decisions to make about custody. If a child has made allegations of abuse against the TP, sole custody will typically be immediately awarded to the AP. If these allegations are a symptom of alienation, and thus false, this can serve as positive reinforcement for the APs behavior, resulting in the child's continued exposure to PA. While PA is a form of psychological abuse (Verrocchio et al., 2017), courts are undoubtedly obligated to put more weight on allegations where a child's physical well-being is at stake. Nevertheless, abuse of any kind is unacceptable. Therefore, the court system is in need of firmer enforcement and more consistent sanctions for parents who have been found to be engaging in PA (Verrocchio et al., 2017).

### **Important Factors Related to Parental Alienation**

Although there is not a specific kind of parent who engages in PA, research suggests that there are some biological, psychological and environmental factors that are

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relevant to this type of behavior. Being aware of how these components can contribute to PA may help evaluators make quicker assessments and gain a better understanding how to best rectify the issue.

**Gender.** Once thought to be more prevalent in mothers, research has shown that APs are just as likely to be fathers (Gardner, 2002). However, there does seem to be a gender difference in alienating strategies. Although the impact on the child is the same, women are more likely to denigrate the father in front of the child, while fathers are more likely to alienate by encouraging the child to be defiant towards to the mother (Balmer et al., 2018; López et al., 2014). There is also evidence to support that a mother's alienating behavior can sabotage the father-child relationship more effectively than the father's alienating behavior can sabotage the mother-child relationship (Johnston, 2003). However, this may have more to do with the tendency for mothers to have primary custody (López et al., 2014; Johnston 2003) than it does with the potency of their alienating strategies.

**Mental Health.** Parents who struggle with certain types of mental illness are more likely to engage in alienating behaviors. Rand (1997a) states that in severe cases, where TPs have been falsely accused of physical or sexual abuse, the AP often has been previously diagnosed with a personality disorder like borderline, histrionic, or paranoid. Johnston (1999, as cited in Rand, 1997a) found that in high-conflict divorces, one or both parents may be narcissistically vulnerable, exhibiting defense mechanisms such as externalization, denial and projection. Other disorders, like Munchausen Syndrome by Proxy, could drive a parent to desperate measures in order to gain sole custody (Rand, 1997a). In less extreme cases, APs may also, on some level, welcome the chaos that

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accompanies high-conflict and alienating strategies as a distraction from their own issues. These may range from internal strife, like depression, to more complicated problems that threaten their own custody rights—like substance abuse, criminal behavior, criminal involvement, physical and/or sexual abuse (Rand, 1997a). Thus, in cases where PA is reported, it is not unusual to find that mental illness has played a role.

**Circumstances.** In her research, Rand (1997a) also found that external triggers, such as a TP getting married or finding a new partner, can also be a driving force behind PA. Parents who have specific vulnerabilities to separation and loss, perhaps due to past traumas or attachment issues, may also be more likely to want revenge on the TP (Baker, 2006; Bernet, 2008; Rand, 1997a). This fragility could also lead a parent to overwhelm their child by inappropriately confiding in them about their feelings of abandonment and loneliness. Wallerstein (1985) refers to this as the “overburdened child,” saddled with the responsibility of taking care of their parent’s emotions as well as having to process their own. Although it is not uncommon for divorce to bring out the worst in people, especially when children are involved, those with predisposed sensitivities to loss may be more likely to become overwhelmed by their emotions and engage in alienating behaviors.

### **Further Considerations of Parental Alienation**

Aside from the damage that PA inflicts upon children and families, its negative impact on society should also be considered. Given the positive correlation between PA and mental health disorders like anxiety, depression, and substance abuse (Baker, 2005a), PA contributes to the global disease burden of mental illness. Statistics show that mental illnesses account for 47% of all disability in economically developed countries and 28% worldwide (Oltmanns, & Emery, 2015). Unfortunately, these rates are expected to

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increase by 2020 (Murray, Lopez, World Health Organization, World Bank, & Harvard School of Public Health, 1996; Oltmanns, & Emery, 2015). According to the World Health Organization (2011), mental illness is the leading cause of disability adjusted life years (DALYs) worldwide. On a domestic scale, the lifetime prevalence of anxiety and mood disorders is approximately 31% and 21%, respectively, and as high as 35% for substance use disorders (Harvard Medical School, 2007). According to the American Journal of Preventive Medicine (2017), this problem comes at a high price, with depression alone costing an average of \$10,000 per patient annually. This data illustrates the profound and wide-ranging negative impact of PA on society and the importance of addressing it in families.

### **Conclusion**

Within the context of high-conflict divorce and custody disputes, PA is a pervasive problem that can have a negative impact on children. Whether confined to toxic behaviors of a parent, or including subsequent symptoms in a child, PA within a family system must be identified and addressed when evaluating custody arrangements that are in line with BICS.

While BICS criteria varies from state to state, a stable measure of the core concepts will vastly improve the process in which custody is determined. Furthermore, protocol on how much weight to give each criterion in BICS, and how to deal with conflicting factors within its constructs, will increase its effectiveness in custody decisions and decrease the influence of personal biases and agendas. Additionally, clarification of the terms used within BICS will help minimize litigation loopholes.

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Therefore, more research is needed into reliable and valid methods of assessing BICS factors, including PA.

If PA is identified or suspected during the custody evaluation process, the courts must work on establishing and enforcing more concrete sanctions for parents who do not comply with legal custody agreements, like those in violation of non-disparagement clauses. Evaluators must also commit to taking PA seriously by recognizing and documenting alienating behaviors of parents, as well as signs of alienation within children. As Verrocchio et al. (2017) points out, this contribution will help improve the effectiveness of family interventions and create a more comprehensive picture of what the child's needs are. Combating PA requires a concerted effort from judges, custody evaluators, psychologists, lawyers, and TPs.

Finally, although there is some divisiveness in the psycho-legal field about the validity of PA as a disorder or a syndrome, these conflicting viewpoints should not distract judges and custody evaluators from recognizing its potential damaging effect on children. Although exposure to PA is shown to lead to serious and destructive psychological conditions, such as anxiety, depression, and substance use disorders, the absence of a clinical condition does not make PA any less crucial when considering potential harm to a child. Therefore, in keeping with the goal of BICS, the presence of PA must be investigated and considered when assessing a custodial arrangement that will best serve a child's overall health and well-being.



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