

## JUDGES INTERVIEWING CHILDREN IN CUSTODY/VISITATION LITIGATION

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### Introductory Considerations

It is important for judges to appreciate that when they interview children in their chambers they are doing so under significantly compromised circumstances. An appreciation of these compromises can help the judge place in proper perspective the information so gained. The court's primary question in custody/visitation litigation is this: Who would be a better parent for this child to live with, the mother or the father? This question is not likely to be answered reasonably unless data is collected from all three parties referred to in the question. Furthermore, the data-collection process will also be compromised if the parties are seen only alone and not interviewed in various combinations. Restricting oneself to interviewing only the child alone compromises the data collection process significantly because it deprives the evaluator of obtaining data in joint interviews, which are often the most valuable part of the data collection process. Family interviews also enable the interviewer to "smoke out" fabrications in a situation in which children traditionally say to each parent what they think that parent wants to hear at the moment. In custody/visitation evaluations, observing the parent-child relationship is the best source of information for ascertaining parental superiority. The present structure of courtroom proceedings generally precludes the court's conducting such parent-child and family interviews. It must rely on the information provided by mental health professionals who conduct these interviews elsewhere.

Another compromise relates to the fact that interviewees, regardless of the circumstances, are more likely to reveal themselves to known parties than to strangers. And the longer and deeper the relationship with the interviewer, the greater the likelihood the interviewee will provide disclosures. And the greater the "dangers" of such revelations, the greater the likelihood that valid information will not be obtained in a short period. Interviewing a child only once does not provide the court with the opportunity to develop the kind of relationship in which such divulgements are likely to be obtained. Judges rarely have the time for multiple interviews, which provide the optimum setting for the kinds of revelations the court is looking for. Furthermore, the child generally enters the judge's chambers in a state of fear. Although *in-camera* interviews are less frightening than courtroom testimony, the judge is still held in awesome regard by most children and many adults. The fear element is likely to compromise significantly the data-gathering process and this cannot but make the information so obtained of dubious value.

The child's level of cognitive development is also an important consideration. Obviously, the younger the child, the less meaningful his or her verbalizations will be. In the individual interview, the court does not have the opportunity to get "translations" from a parent who understands better the child's terminology, innuendos and gestures. Accordingly, judges must appreciate that the person they are interviewing is the one of the three who is likely to provide the least valuable data pertinent to the court's considerations.

The younger the child, the less the capability of differentiating fact from fantasy -- a differentiation to which courts pay particular attention. In a recent case in Florida with which I was involved, during the *in-camera* interview (in which the attorneys were present), Florida law required that the interviewers first establish whether the four-year-old girl being questioned could "tell the difference between the truth and a lie." This interview was conducted with a child whose parents were litigating over her custody and whose father was brought up on charges of sexual abuse because the child had told her mother that "Daddy killed Santa Claus.... Daddy killed the Easter bunny...and Daddy put his finger in my 'gina'." No one sent an expedition to the North Pole to see if Santa Claus was dead. No one sent out a search party to find out whether the body of the dead Easter bunny could be produced. But a horde of individuals descended upon this family in response to the third allegation. A four-year-old child who believes in the existence of Santa Claus and the Easter bunny *ipso facto* does not differentiate well between fact and fantasy. Yet all interviewers agreed that she could do so for the purpose of the sexual abuse investigation and the inquiry continued. (Incidentally, I concluded that the third allegation was as much a fantasy as the first two.) The purpose of the judge's interview is to find out what "the truth" is with regard to various aspects of the custody dispute. The assumption is made that the child knows what the truth is with regard to a variety of issues. All of us distort the truth somewhat in accordance with what our wishes are and children even more so. Time generally blurs reality and the younger the person is at the time of a particular event, the greater the likelihood time will distort its recollection. By the time a judge sees a child in chambers, the events under consideration may have taken place months or even a few years previously. It is reasonable to say that for many of the events being discussed with the judge, many children no longer know the truth and could not tell what the truth was no matter how honest they were trying to be.

### **Technical Considerations**

Many judges will tell children, at the beginning of their interviews with them, that what the children say will be held strictly confidential and that their parents will never learn about what they have said. Unless the court can be 100 percent certain that this promise will be fulfilled, it is a risky one to make. Generally, this reassurance is given under circumstances in which a transcriber is recording every word. The transcripts of the interview that ultimately are made usually are sent to the attorneys who may or may not be instructed to reveal their contents to the parents. It is but a short step to the child's learning as well that the judge has not kept the "secrets." Under these circumstances the child cannot but feel betrayed -- especially by someone who is held in high esteem. It is yet another betrayal added to that of a parent's leaving home. Accordingly, I generally discourage courts from making such promises. Rather, judges should proceed without such a promise and hope that the child's needs to communicate important issues will override the fear that the parents may learn of the disclosures. If the child does ask about whether the divulgences will be revealed, the judge does well to tell the child that his or her comments may be available to the parents or that the judge must be given the freedom to decide which information will be revealed and which will not.

The court does well to begin the interview by asking the child simple questions, which the child can answer with ease and freedom from anxiety, e.g., name, address, age, telephone number, etc. Each time the child gets the "right" answer, the initial tensions and anxieties are reduced and

make it easier for the child to answer the more anxiety-provoking questions that will inevitably ensue. The court should avoid questions that could be answered by either yes or no. Of course, this is just the opposite of what is done in cross-examination where the yes-no question has a deep-seated heritage. Although this form of inquiry may be useful in "nailing down the facts," I do not hold it in as high regard as my legal colleagues. When one asks a question that could be answered with either yes or no, one does not really know whether the response is valid. A quick answer of yes or no may be an easy way for the responder to "get off the hook" with regard to providing a meaningful answer. Much more valid material is obtained with questions that elicit sentences and descriptions that are self-derived by the respondent. For example, if one asks a boy whether he loves his mother, one is likely to get a yes answer -- even if she has been brought up on charges of physical abuse. Or, if a child says no, one still has very little information. However if one asks questions like, "Tell me about your mother" or "I'd like you to tell me the things about your mother you like and the things about her that you don't like." the responses are likely to be far more revealing. In the context of such discussions, the court should get specific details about each item described. One wants the child to verbalize from concrete imagery that is being visualized. The court does well to avoid questions relating to time. To ask a child about when a particular event took place is not likely to produce meaningful data. The younger the child, the less appreciative he or she is of the passage of time and the less capable the child is of pinpointing the exact time that a particular event occurred. Time questions only invite fantasized answers, which only compromise the data-collection process. The court should ask questions that begin with *what, where, who* and *how*.

When providing examiners with guidelines for the kinds of questions to ask children involved in custody/visitation conflicts, I generally recommend that they use what I refer to as "grandma's criteria." These are the parental manifestations that grandma's ghost would consider if it were free to roam the house and then report its findings to the court. If she is like most grandmas, she does not have an M.D. or Ph.D. degree and has very little formal so-called "psychological sophistication." She would observe the children from the minute they got up in the morning until they went to sleep. She would determine who wakes the children in the morning, who gives them breakfast and prepares them for school. Of course, if father's work requires him to leave so early that he cannot involve himself in these activities, this cannot be considered a deficiency on his part. This is similarly the case for spending lunch time with the children and being available after school. It is the after-work hours, when both parents traditionally are home, that grandma would get her most useful information. She would want to observe who helps the children with their homework and if this is done smoothly or whether there are typically power struggles, tears, fits, tantrums, threats, impatience, and other manifestations of a poor parent-child relationship. She would observe disciplinary measures, especially whether they are humane, consistent and benevolently administered. She would pay close attention to the bedtime scene. Are bedtime stories read? Are the children lulled into sleep in a loving manner or is it typically a time of threats and punishments? What happens during the night may also be important. Who gets up to change the diapers? To whom does the child turn for consolation after nightmares? Which parent has traditionally taken the child to the emergency room or the doctor's of rice when they have been evening and nighttime accidents and/or other medical emergencies? The judge does well to get information in these areas by discussing directly with the child the day's events, from arising in the morning to going to sleep at night, and finding out who are the adults involved in these various activities.

Another important area of inquiry is parental attendance at school activities, both curricular and extracurricular. The court should find out who attends teacher conferences and what the parental reactions are to report cards. Is there pride and/or emotional reaction or complete indifference? Who attends various plays, concerts, recitals and open-school activities? These are among the most valuable criteria for ascertaining parental capacity and the nature of the parent-child relationship.

The court may learn much by asking the child about the details of the visitations: what is done, who was present, where did they go, etc. A child, for example, might describe a father who brings along every transient date, thereby fulfilling two obligations at the same time. Some children describe the visiting parent dropping them off at the home of third parties (aunts, grandparents, and an assortment of other individuals) and then pursuing their own interests. Many children describe the visiting parent's cross-examination of them on visitation days to extract information that might be useful in litigation. Other children go on a round of circuses, rodeos, toes, etc. Although such overindulgence may serve the purpose of guilt assuagement or rivalry with the custodial parent, in excess it is a parental deficit.

Sometimes questions about the reasons for the divorce may provide the court with useful information. The child's description of the nature of the marital conflict may include information about parental capacity. For example: "My mother couldn't stand my father's drinking anymore. I used to help her find the bottles that he would hide." One can ask about each parent's receptivity to friends' visiting the home and the parental tolerance of the noise, rambunctiousness, horseplay and the minor damage that inevitably occurs when children are in the home. Do the child's friends like each of the parents? Is the parent receptive to the child's visiting other homes? Although none of the aforementioned questions are in the category: "Who do you want to live with, your mother or your father?" they clearly provide vital information for the court in making its decision regarding parental preference.

If the child is allowed to talk about anything he or she wishes, and although the child's comments may initially appear irrelevant to the court's purpose, there are times when useful information regarding parental capacity can be obtained. Such discussion might be introduced with questions such as "What would you like to talk about now?" and "So tell me something else." In response to such a question, a boy might start talking about his interest in baseball. In the context of his discussion he speaks with pride about his accomplishments in Little League and how proud he is that his father is one of the coaches. He expresses regret that the rules do not permit him to be on the team that his father is coaching. Or, a 14-year-old girl, again after professing to the judge that she does not want to state her parental preference, may start talking about the fact that she goes shopping with her mother, who is quite expert at selecting perfumes, lipstick and make-up and with whom she can discuss such personal matters as her period and her feelings about boys. Time does not generally permit the court to indulge itself to a significant degree in this kind of inquiry, but it does well to appreciate its value and recognize that its investigations are compromised by its omission.

The court also should recognize that the child's comments may be colored by individuals who are outside the judge's chambers during the course of the interview. Children embroiled in custody/visitation disputes suffer with terrible loyalty conflicts. They generally say to each

parent that which will ingratiate them to that parent at that time, regardless of their true beliefs and regardless of the consequences of fabrications they may provide. This principle extends itself to the in-camera interview wherein the child is likely to support the parent who is close by. Moreover, the parent who brings the child and/or the parent who takes the child back home is also likely to have an influence on what is said in chambers. Furthermore, children have short memories. A father who brings the child to the court on Monday morning, after a weekend of fun activities, may very well be viewed as the preferable parent. And a mother who brings the child to court on Friday afternoon, after a difficult week in which the child was forced to do homework, chores, and was disciplined for normal childhood transgressions, is likely to be viewed with disfavor. Accordingly, the court should have both parents bring the child to the courthouse and both parents bring the child home or have a neutral third party accompany the child to the courthouse. But even under such circumstances the court does well to make inquiries regarding the aforementioned considerations of recent parental involvement.

It is important for the judge to appreciate that by the time he or she interviews the child in chambers there probably have been numerous earlier interrogations extending over many months and even a few years. Under such circumstances, the child may no longer know what he or she wants. So mind boggling have been the child's experiences with lawyers and mental health professionals that lying may have become a *motus vivendi*. Under these circumstances, many children operate on the principle that they will say whatever is most expeditious at that particular time, that which will ingratiate them to the person with whom they are speaking at that moment. The pattern has become so deeply ingrained that the bona fide preferences and opinions have long been suppressed and repressed from conscious awareness.

### **The Parental Alienation Syndrome**

In recent years we have witnessed a burgeoning of a disorder that I refer to as the *parental alienation syndrome*. Judges interviewing children in custody disputes should be aware of this disorder, otherwise they may be "taken in" by a child who suffers with it and thereby make an injudicious ruling. I use the term to refer to a disturbance in which children are obsessed with deprecation and criticism of a parent -- denigration that is unjustified and/or exaggerated. The notion that such children are merely "brainwashed" is narrow. The term brainwashing implies that one parent is systematically and consciously programming the child to denigrate the other parent. The concept of the parental alienation syndrome includes the brainwashing component but is much more inclusive. It includes not only conscious but subconscious and unconscious factors within the parent that contribute to the child's alienation. Furthermore (and this is extremely important), it includes factors that arise within the child -- independent of the parental contributions -- that contribute to the development of the syndrome.

Typically the child is obsessed with "hatred" of a parent. (The word *hatred* is placed in quotes because there are still many tender and loving feelings felt toward the allegedly despised parent that are not permitted expression.) These children speak of the hated parent with every vilification and profanity in their vocabulary, without embarrassment or guilt. The vilification of the parent often has the quality of a litany. After only minimal prompting by a lawyer, judge, probation officer, mental health professional, or other person involved in the litigation, the record will be turned on and a command performance provided. Not only is there a rehearsed

quality to the speech but one often hears phraseology that is identical to that used by the "loved" parent. (Again, the word loved is placed in quotations because hostility toward and fear of that parent may similarly be unexpressed.) Even years after they have taken place, the child may justify the alienation with memories of minor altercations experienced in the relationship with the hated parent. These are usually trivial and are experiences that most children quickly forget: "He always used to speak very loud when he told me to brush my teeth"; "She used to say to me 'Don't interrupt'"; and "he used to make a lot of noise when he chewed at the table." When these children are asked to give more compelling reasons for the hatred, they are unable to provide them. Frequently, the loved parent will agree with the child that these professed reasons justify the ongoing animosity.

The professions of hatred are most intense when the children and the loved parent are in the presence of the alienated one. However when the child is alone with the allegedly hated parent, he or she may exhibit anything from hatred to neutrality to expressions of affection. Often, when these children are with the hated parent they will let their guard down and start to enjoy themselves. Then, almost as if they have realized that they are doing something "wrong" they will suddenly stiffen up and resume their expressions of withdrawal and animosity. Another maneuver commonly utilized by these children is to profess affection to one parent and to ask that parent to swear that he or she will not reveal the professions of love to the other parent. And the same statement is made to the other parent. In this way these children "cover their tracks" and avoid thereby the disclosure of their schemes. Such children may find family interviews with therapists extremely anxiety provoking, because of the fear that their manipulations and maneuvers will be divulged.

The hatred of the parent often extends to include that parent's complete extended family. Cousins, aunts, uncles, and grandparents, with whom the child previously may have had loving relationships, are now viewed as similarly obnoxious. Greeting cards are not reciprocated. Presents sent to the child's home are refused, remain unopened, or even destroyed (generally in the presence of the loved parent). When the hated parent's relatives call on the telephone, the child will respond with angry vilifications or quickly hang up on the caller. (These responses are more likely to occur if the loved parent is within hearing distance of the conversation.) With regard to the hatred of the relatives, the child is even less capable of providing justifications for the animosity. The rage of these children is so great that they become completely oblivious to the deprivations they are causing themselves. Again, the loved parent is typically unconcerned with the untoward psychological effects on the child of the rejection of these relatives.

Another symptom of the parental alienation syndrome is the complete lack of ambivalence. All human relationships are ambivalent, and parent-child relationships are no exception. The hated parent is viewed as "all bad" and the loved parent is "all good." The hated parent may have been greatly dedicated to the child's upbringing, and a deep bond may have been created over many years. The hated parent may produce photos that demonstrate clearly a joyful and deep relationship in which there was significant affection, tenderness, and mutual pleasure. But all these experiences appear to have been obliterated from the child's memory. When these children are shown photos of enjoyable events with the hated parent, they usually rationalize the experiences as having been forgotten, non-existent, or feigned: "I really hated being with him then; I just smiled in the picture because he made me. He said he'd hit me if I didn't smile." This

element of complete lack of ambivalence is a typical manifestation of the parental alienation syndrome and should make one dubious about the depth of the professed animosity.

The child may exhibit a guiltless disregard for the feelings of the hated parent. There will be a complete absence of gratitude for gifts, support payments, and other manifestations of the hated parent's continued involvement and affection. Often these children will want to be certain the alienated parent continues to provide support payments, but at the same time adamantly refuse to visit. Commonly they will say that they never want to see the hated parent again, or not until their late teens or early twenties. To such a child I might say: "So you want your father to continue paying for all your food, clothing, rent, and education -- even private high school and college -- and yet you still don't want to see him at all, ever again. Is that right?" Such a child might respond: "That's right, he doesn't deserve to see me. he's mean and paying all that money is a good punishment for him." Those who have never seen such children may consider this description a caricature. Those who have seen them will recognize the description immediately, although some children may not manifest all the symptoms. The parental alienation syndrome is becoming increasingly common and there is good reason to predict that it will become even more common in the immediate future if custody conflicts become even more prevalent. Further descriptions of this disorder may be found elsewhere (Gardner. 1985 and 1986).

### **A Theory on the Causes of the Parental Alienation Syndrome**

I believe that the dramatic increase in the parental alienation syndrome that we have witnessed in recent years is a direct result of social and legal changes that have affected the legal principles by which judicial decisions in custody disputes are made. I present here a theory describing what I believe to be the relationship between these changes and the present epidemic of children with this disorder.

First, the displacement of the tender-years presumption with the best-interests-of-the-child presumption was initiated primarily by men who claimed that the tender-years presumption was intrinsically "sexist" because women, by virtue of the fact that they are female, are not necessarily preferable parents. State legislatures and the courts agreed. As a result, in the mid-1970s the best-interests-of-the-child presumption became uniformly equated with the notion that custody determinations should be "sex blind." Considerable difficulty has been caused, I believe, by equating these two concepts. It is extremely important that they be considered separately. It is not necessarily the case that sex-blind custody decisions serve the best interests of children and the belief that they do is the fundamental assumption on which present custody decisions are being based. Somehow, the acceptance of the concept that fathers can be as paternal as mothers can be maternal was immediately linked with the concept that such egalitarianism serves the best interests of children. i do not accept this assumption of gender equality in child-rearing capacity and would go further and state that the younger the child, the less the likelihood that this assumption is valid. It follows then that I do not believe that sex-blind custody evaluations and decisions serve the best interests of children.

To elaborate, no one can deny that men and women are different biologically. No one can deny, either, that it is the woman who bears the child and has it within her power to feed it with her own body (although she may not choose to do so). I believe that this biological difference cannot

be disassociated from certain psychological factors that result in mothers being more likely to be superior to fathers with regard to their capacity to involve themselves with the newborn infant at the time of birth. After all, it is the mother who carries the baby in her body for nine months. It is she who is continually aware of the baby's presence. It is she who feels the kicks and movements. It is she who is ever reminded of the pregnancy by formidable changes in her body and by the various symptomatic reminders of the pregnancy: nausea, vomiting, fatigue, discomfort during sleep, etc. Even the most dedicated fathers generally do not have these experiences and form the attendant strong psychological ties that they engender. The mother, as well, must suffer the pains of the infant's delivery. Even though the father may be present and an active participant in the process, the experience is still very much the mother's. And, as mentioned, it is the mother who may very well have the breastfeeding experience, something the father is not capable of enjoying. All these factors create a much higher likelihood that the mother will have a stronger psychological tie with the infant than the father at the time of birth. This "upfront" programming places her in a superior position with regard to psychological bonding with the newborn infant at the time of birth. I believe that most individuals would agree that if parents decided to separate at the time of birth and both were reasonably equal with regard to parenting capacity, the mother would be the preferable parent.

Some might argue that even if the aforementioned theories are valid, the superiority stops at the time of birth and men are thereafter equal to women with regard to parenting capacity. Even here I am dubious. It is reasonable to assume that during the course of evolution there was preferential selective survival of women who were highly motivated child rearers on a genetic basis. Such women were more likely to seek men for the purposes of impregnation and more likely to be sought by men who desired progeny. Similarly, there was preferential selective propagation of men who were skilled providers of food, clothing, shelter, and protection of women and children. Such men were more likely to be sought by women with high child-rearing drives. This assumption, of course, is based on the theory that there are genetic factors involved in such behavior. Women with weaker child-rearing drives were less likely to procreate and men with less family provider and protective capacities were also at a disadvantage with regard to transmitting their genes to their progeny. They were less attractive to females as mates because they were less likely to fulfill these functions so vital to species survival.

Accordingly, although it may be the unpopular thing to say at this time, I believe that the average woman today is more likely to be genetically programmed for child-rearing functions than the average man. Even if this is true, one could argue that we are less beholden to our instincts than lower animals and that environmental influences enable us to modify these more primitive drives. I do not deny this, but up to a point. There are limitations to which environment can modify heredity, especially in the short period of approximately ten years since the tender-years presumption was generally considered to be sexist. Environment modifies heredity primarily (and many would say exclusively) by the slow process of selective survival of those variants that are particularly capable of adapting to a specific environment. Accordingly, I believe that the strength of these genetic factors are still strong enough in today's parents to be given serious consideration when making custody decisions.

The seemingly egalitarian practice of not taking into consideration the aforementioned factors and assuming that men are equal to women with regard to child-rearing capacity has been, I



believe, a disservice to women. Many have responded to the threat of removal of their children by the utilization of a variety of maneuvers that have contributed to the development of the parental alienation syndrome in their children. Although many of these could be considered vicious, manipulative, and deceitful, I have a certain sympathy for these women. They have felt helpless and impotent and have often resorted to primitive techniques because of the failure of more civilized and adult maneuvers to work for them. And children, too, have been threatened by disruption of the mother-child bond. Their techniques have been even more primitive because of their naivete about the world. They have selected maneuvers that seem absurd and preposterous to the adult, but do not so to children because of their cognitive immaturity and inability to use more sophisticated mechanisms of defense against the disruption of the mother-child bond.

Another development that intensified custody litigation and contributed thereby to an increase in the frequency of the development of the parental alienation syndrome was the widespread popularity of the joint-custodial concept that we have witnessed in the last five to eight years. This ideal, too, is seemingly egalitarian. Ostensibly, one should not be able to argue against a visitation arrangement in which the time the children spend with each parent is divided equally and the parents are equal with regard to decision-making powers. This ideal is certainly realized by parents who are equally capable of rearing their children and have proven themselves capable of cooperating and communicating well with each other. However when the parents do not satisfy these criteria and the courts still decide (either by compliance with statutes or judicial decision) to order a joint custodial arrangement, the setting for further parental dispute is then created. Under such circumstances a joint custodial arrangement may be essentially a no-custodial arrangement. The children are then used as ropes in a tug of war. They are in a no-man's land, up for grabs by either parent. Under these circumstances the viciousness of the litigation becomes further intensified and the likelihood of a parental alienation syndrome developing is enhanced even more.

Accordingly, two changes in the last 10 to 15 years have contributed to the burgeoning of child custody disputes and the development of the parental alienation syndrome. The first was the replacement of the tender-years presumption with the best-interests-of-the-child presumption. In association with this change, the assumption was made that children's interests are best served when custodial decisions are sex blind. The second change, about five years later, related to the introduction of the widespread enthusiasm for the joint custodial concept. Both of these developments did not give proper consideration to the strength of the mother-child bond and were therefore a disservice to women. They increased the viciousness of the custodial conflicts and created a setting in which the parental alienation syndrome has become epidemic.

### **Interviewing Children with Parental Alienation Syndrome**

Children suffering with a parental alienation syndrome may present the judge with a convincing picture. By the time the child reaches the judge, he or she has developed a well-rehearsed litany of complaints against the presumably hated parent. This can be quite convincing, especially because the script has probably been rehearsed many times over with the allegedly preferred parent. Also, by the time the child reaches the judge, he or she has probably presented the scenario to a variety of attorneys and mental health professionals. This has given them the

opportunity to practice and sharpen their speeches. I have seen a number of occasions when judges have been completely taken in and have not appreciated that they were being handed a "bill of goods." These children have a way of "snow balling" even experienced psychologists and psychiatrists, so I cannot be too critical of judges here. I present below a series of questions that judges should find useful when interviewing these children. It is important to appreciate that the questions provided here relate to the more common situation, the one in which the father is the hated parent and the mother the loved one. However when the situation is reversed (the mother the hated one and the father the loved one) I obviously reverse the questions.

*Describe your mother to me.* Children with parental alienation syndrome typically provide only positive responses. If any negatives are provided, they will usually be minimal. If asked to elaborate upon the negatives, only inconsequential criticisms will be provided. Children who are "normal" or suffer with other kinds of psychiatric disturbances will generally be able to list both positives and negatives about each parent. The complete idealization of a parent is a clue to the presence of this disorder.

*Describe your father to me.* The child with parental alienation syndrome will enumerate various criticisms at great length. These will be both present and past. Often the past indignities will be about experiences that other children would consider normal or would have forgotten long ago. Sometimes a complaint will be about an event which the child has not actually observed but which the mother has described. The child will accept as valid the mother's rendition and not give any credibility to the father's refutation. When it is pointed out to the child that few if any positives have been described, the child will claim flatly that there are none. Inquiries into past good times between the child and the father will be denied as nonexistent or the child will claim that these events were painful and the child's professed enjoyment of them stemmed from the fear of punishment for not doing so. It is this complete one-sidedness of the response, the total absence of normal ambivalence, that should alert the interviewer to the fact that one is probably dealing with a child suffering with parental alienation syndrome.

*How do you feel about your father's family?* The child with a parental alienation syndrome will generally respond that all members of the father's extended family, even the child's own grandparents and previously loved aunts, uncles and cousins, are somehow obnoxious and vile. When asked for specific reasons why there is absolutely no contact at all with any of these individuals, no compelling reasons are provided. Often inconsequential reasons are given. Attempts to impress upon the child how important it is to have relationships with these loving relatives is futile. The child extends the noxious view of the father to the father's extended family. The child will describe no sense of loss or loneliness over this self-imposed removal from the father's extended family. If a potential or actual stepmother is involved with the father, this hatred will extend to her and her extended family as well.

*Does your mother interfere with your visiting with your father?* Generally the child will describe absolutely no interference on the mother's part. Often the child will proudly describe the mother's neutrality and state that the decision is completely his or her own.

*Why then don't you want to visit with your father?* The child may give very vague reasons. When asked to give specific reasons these children may describe horrible abuses in a very convincing

way. In addition, they often provide gross exaggerations of inconsequential complaints. They make "mountains out of mole hills" and will dwell on frivolous reasons for not visiting. Often they will claim that they want absolutely no contact at all with the father for the rest of their lives, or at least not before they are adults. When it is pointed out to these children that the vast majority of other children would not cut their fathers off entirely, forever, for such "indignities," they insist that their total rejection is justified.

*Does your mother harass you?* Healthy children generally will give some examples of "harassment" such as being made to turn off the television, do homework, or go to bed earlier than they want. Children with parental alienation syndrome describe no such harassments. They often will describe their mother as being perfect and as never asking them to do things they don't want. This is obviously a fabrication and is a manifestation of the whitewash of the mother. I use the word harassment with these children because it is a common expression utilized by mothers of parental alienation syndrome children. The father's overtures for involvement with the child are generally referred to as harassment by the mother. If the child is unfamiliar with the word harassment, I substitute "bother you a lot."

*Does your father harass you?* These children are likely to describe in great detail the father's "harassments." Generally, they involve attempts on his part to gain contact with the children. Letters, telephone calls, and legal attempts to gain visitation are all clumped under the term "harassments." Although the father's initial overtures may have been spaced reasonably, with mounting frustration over rejection and alienation, the father's overtures increase in frequency and intensity. The love and affection that is at the foundation of these overtures is denied completely by both the mother and the parental alienation syndrome child. Rather, they are viewed simply as onerous harassments.

The above questions are general ones. The judge does well to ask more specific questions pertinent to the particular case. These might include questions regarding why the child wants to change his or her name back to the mother's maiden name, why the father's Christmas presents were thrown in the garbage (usually in the mother's presence), why the child wants to have the father still contribute to his or her education even though he or she never wants to see the father again, what the brother's and sister's reasons are for not wanting to see the father (these too often prove inconsequential), and so forth.

Judges who interview children in chambers must be made aware of the fact that these children may be very convincing. They may be taken in by the litany of complaints and give such weight to the child's statements that they may go along with the child's stated preference. Judges must be alerted to the primary manifestations of this disorder, especially the complete lack of ambivalence, the dwelling on frivolous and inconsequential "indignities," the total removal from the extended family of the hated parent, the absolute denial of any positive input on the hated parent's part at any time in the child's life, and the definite statement that the child wishes never to see the hated parent again throughout the remainder of his or her life. It is hoped that judges will increasingly appreciate what is occurring when they see such children and rectify the situation in accordance with the guidelines to be presented in the following sections.

## **The Role of the Judiciary in Dealing Optimally with Parental Alienation Syndrome Children and Their Parents**

I believe that the courts can play a crucial role in helping families in which a child manifests a parental alienation syndrome. The courts have the power to make custodial assignments that can be quite therapeutic -- a power that therapists do not have. I would go further and state that without the court's utilization of its powers in many cases, it would be extremely unlikely, if not impossible, to treat certain children in this category.

It would appear from the aforementioned comments that I am on the verge of recommending that we go back to the tender-years presumption. This is not completely the case. *What I am recommending is that we give preference in custody disputes to the parent (regardless of sex) who has provided the greatest degree of child-rearing input during the children's formative years.* Because mothers today are still more often the primary child-rearing parents, more mothers would be given parental preference in custody disputes. If, however, in spite of the mother's superiority at the time of birth, it was the father who was the primary caretaker -- especially during the early years of life -- such a father would be considered the preferable custodial parent. This presumption, too, is essentially sex blind because it allows for the possibility that a father's input may outweigh the mother's in the formative years, even though he starts at a disadvantage.

I believe the courts have not been paying enough attention to the formidable influence of the early life influences on the child's subsequent psychological status. Early life influences play an important role in the formation of the child's psychological bond to the parent who was the primary caretaker during the earliest years. Courts have been giving too much weight to recent and present-day involvement and ignoring the residual contributions of early bonding to present experiences. Mothers have been much more often the primary custodial parents during the early child-rearing process. This produces a strong bond between the two that results in strong attachment cravings when there is a rupture of the relationship. Accordingly, when there is a threatened disruption of this relationship by a sex-blind judge or joint-custodial mandate, mother and child fight it vigorously. Commonly, the mother brainwashes the child and uses him or her as a weapon to sabotage the father's attempts to gain primary custody. The children develop their own scenarios, as well, in an attempt to preserve this bond. I believe that residua of the early influences are playing an important role in the attempts on the part of both parties to maintain the attachment bond.

The implementation of the presumption that children do best when placed with the parent who is most involved in child rearing, especially during the formative years, would reduce significantly the custody litigation that we are presently witnessing. It would result in many mothers automatically being awarded custody. It would not preclude, however, fathers obtaining custody because there would be some fathers who would satisfy easily this important criterion for primary custodial assignment. The implementation of this presumption would still allow those parents who were only secondarily involved in the child's rearing (whether male or female) to have the opportunity to seek and gain custody. They would, however, have to provide compelling evidence that the primary custodial parent's child-rearing input was significantly

compromised and their own contributions so formidable that they should more justifiably be designated primary custodial parents.

Let us envision a situation in which a couple has one child, a boy. During the first four years of the child's life, the mother remains at home as the primary child rearer and the father is out of the home during the day as the breadwinner. When the child is four the mother takes a full-time job. During the day the child attends a nursery school and then stays with a woman in the neighborhood who cares for the children of working parents. At the end of the workday and over weekends both parents are involved equally in caring for the child. When the child is seven the parents decide to separate. Each parent wants primary custody. The father claims that during the three years prior to the separation, he was as involved as the mother in the child's upbringing, and the mother does not deny this. The father's position is that the court should make its decision solely on the basis of parenting capacity -- especially as demonstrated in recent years -- and claims that any custody decision taking his sex into consideration is "sexist" and is an abrogation of his civil rights.

In the course of the litigation the child develops typical symptoms of the parental alienation syndrome. He becomes obsessed with hatred of his father, denies any benevolent involvement with him at any point in his life, and creates absurd scenarios to justify his animosity. In contrast, his mother becomes viewed as faultless and all-loving. I believe that in this situation the child's psychological bond is strongest with the mother and the symptoms of alienation are created by him in an attempt to maintain that bond. Because the child's earliest involvement was stronger with the mother, residua of that tie are expressing themselves at the age of seven. If the father had been the primary caretaker during the first four years of the boy's life, and if then both mother and father shared equally in child-rearing involvement, then I would consider it likely that the child would develop symptoms of alienation from the mother, the parent with whom the psychological tie is weaker. Under such circumstances, I would recommend the father be designated the primary custodial parent.

However the situation is not that simple. One does well to divide such mothers (I am now going back to the original vignette in which the mother was the primary caretaker during the earliest years) into two categories: 1) Those mothers who actively program the child against the father who become obsessed with hatred of the former husband, and who actively foment, encourage, and aid the child's feelings of alienation, and 2) Those mothers who recognize that such alienation is not in the best interests of the child and are willing to take a more conciliatory approach to the father's requests. They either go along with a joint custodial compromise or allow (albeit reluctantly) the father to have sole custody with their having a liberal visitation program. Although these mothers believe it would be in the best interests of the child to remain with them, they recognize that protracted litigation is going to cause all family members to suffer more grief than an injudicious custody arrangement, namely, one in which the father has more involvement (either sole or joint custody) than they consider warranted. I recognize that this division into two types of mothers is artificial and that in reality we have a continuum from those mothers who are in category one to those mothers who are in category two. To the degree that a particular mother falls into category one, my recommendations below for her category are applicable: in contrast, to the degree that the mother falls in category two, my recommendations below for her category are applicable.

With regard to mothers in category one who are fanatics in their animosity, I believe that as long as the child remains living with such a mother, the less the likelihood of the child's establishing any rapprochement with the father. Once in the father's home, therapy should be instituted in order to effect a gradual rapprochement with the mother. Whether the child will ultimately go back to the mother depends upon how the treatment evolves and how successful the therapist is in helping the mother reduce her hostility. In some cases, the therapy may be possible only if ordered by the court, so hostile and uncooperative is the mother. However the child will at least be residing in the home of the healthier parent and will derive the benefits from such placement, continuing hostile attitudes toward the father notwithstanding. My experience has been that in such cases the animosity gradually becomes reduced. In contrast, when such children are allowed to remain permanently in the home of the category-one mother, the animosity continues unabated and can go on for years, and there is good reason to believe that it may become lifelong.

With regard to mothers in category two, I believe that the children should remain with their mothers. In such cases the alienation is primarily of the child's origin. It stems from the threat of being required by the court to live with the father -- the parent with whom the child has had the weaker psychological bond. It is not significantly the result of maternal programming. Once the litigation has been concluded and a final decision has been made by the court that the child shall not be living primarily with the father, then the child is likely to go back to his/her previous level of involvement with both parents especially with regard to love and hate -- and the hostility toward the father is likely to reduce itself significantly. Without the threat of placement with the father, the child can discontinue the utilization of the hostile maneuvers that were designed to insure his/her remaining with the mother.

Examiners involved in custody evaluations do well to make some assessment of the nature of the psychological bond that the child has with the parent who was primarily involved in the child's upbringing during the earliest years. One should try to ascertain whether the bond is primarily a healthy or an unhealthy one. Again, although I am dividing this bond into two types, I am well aware that there is a continuum from the healthiest to the sickest. Mothers in category one generally have had an unhealthy bond with the child prior to the litigation and they are the ones who are more likely to be programming the child against the father. In extreme cases, as a result of the mother's indoctrination, the child may actually be brought to the point of paranoid delusions about the father. A so-called folie à deux relationship may evolve in which the child acquires the mother's paranoid delusions about the father. In such cases transfer is mandatory if there is to be any hope of salvaging the relationship with the father. In such cases, as well, treatment of the mother may be impossible. Then, at least the child will be with one healthy parent, rather than being brought up by a paranoid mother. Of course, this represents the most extreme form of the category-one mother; less animosity is the usual case. To the degree that such mothers can be helped to work out their problems regarding their feelings about their former husbands and to the degree that they can be brought to appreciate the importance of the child's ongoing contact with him, rapprochement with her may be fostered. While the child is living with the father, contact with the mother is monitored by the therapist and father, with increased contact being given as her programming diminishes.

Mothers in category two have a healthy psychological bond with the child and, therefore, should be given preferential consideration in custody evaluations and not be considered automatically to be actively programming their children. The therapeutic program recommended for category-one mothers need not be instituted.

As mentioned, in the majority of the cases of parental alienation syndrome, it is the mother who is favored and the father denigrated. The reasons for this have been discussed elsewhere (Gardner, 1986). However, there are certainly situations in which the mother is deprecated and the father favored. For simplicity of presentation, and because mothers are more often the favored parent, I have used her as the example of the preferred parent -- but recognize that in some cases it is the father who is the preferred parent, the one who may be programming the child, and it is the mother who is the despised parent. In such cases the fathers should be divided into the aforementioned categories and given the same considerations as described for mothers.

My final position with regard to the principle that should be utilized when ascertaining parental preference in custody disputes is this: Preference (but not automatic assignment) should be given to that parent (regardless of sex) with whom the child has established over time the strongest healthy psychological bond. That parent (regardless of sex) who was the primary caretaker during the earliest years of the child's life is the one with whom the child is more likely to have established such a bond. Residua of that early bonding are likely to influence strongly subsequent bonding experiences with the parents. However, the longer the gap between the early bonding and the time of the dispute, the greater the likelihood other experiences will affect the strength of the bond. Whether or not these have resulted in the formation of an even stronger bond with the parent who was not the primary caretaker during the earliest years has to be assessed in the course of the evaluative process.

Last, I recommend that we replace the best-interests-of-the-child presumption with the *best-interests-of-the-family* presumption. The best-interests-of-the-child presumption is somewhat narrow. It does not take into consideration the psychological effects on the parents of the child's placement and the effects of the resultant feedback on the child's welfare. As mentioned, the strong bond that forms in early life between the child and the primary caretaker produces immensely strong cravings for one another when there is threatened disruption of the relationship. Just as the child suffers psychologically from removal from the adult, so is the adult traumatized by removal from the child. The psychological trauma to the adult caused by such disruption can be immense, so much so that parenting capacity may be compromised. This negative feedback, of course, is not in the best interests of the child. But we are not dealing here simply with the question of placing the child with a parent in order to protect that parent from feeling upset about the child's being placed with another parent. Rather, we are considering the ultimate negative impact on the child of the disruption of the bond with the primary caretaker. Accordingly, I am recommending that courts assign primary custody in accordance with the presumption that the *family's* best interests will be served by the child's being placed with that parent who was the primary caretaker during the formative years, and the longer that parent continued to be primary caretaker, the greater likelihood the family's interests will be served by placement with that parent. The implementation of this presumption will, I believe, also serve as a form of preventive psychiatry in that it will not only reduce significantly custody/visitation litigation but serve to obviate the terrible psychological problems attendant to such litigation.

**References**

Gardner, R.A. (1982), *Family Evaluation in Child Custody Litigation*. Cresskill, New Jersey: Creative Therapeutics.

-- (1986), *Child Custody Litigation: A Guide for Parents and Mental Health Professionals*. Cresskill, New Jersey: Creative Therapeutics.