

## FATHER? WHAT FATHER?<sup>1</sup>

### PARENTAL ALIENATION AND ITS EFFECTS ON CHILDREN

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

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Part One of this article distinguishes alienation from estrangement.<sup>4</sup> Estrangement occurs when children cease having contact with a parent for justifiable reasons. Alienation is said to have occurred when the children's purported reasons does not justify the cessation of contact with the parent. Part One outlines some of the many insidious methods employed by alienating parents. It details how those parents drive a wedge between their children and the "target" parent until the children themselves continue to find fault (real or imagined) with the target parent. From that point onward the alienating parent need do no more. She has started the snowball

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<sup>1</sup> Although alienation might be employed by either parent, because it is more likely to be employed by mothers than by fathers, *see, generally*, Stanley S. Clawar & Brynne V. Rivlin, *Children Held Hostage: Dealing with Programmed and Brainwashed Children* Ch. VII, ("The Female Factor: Why Women Programme More Than Men")(American Bar Association Section of Family Law, 1991), and because mothers are more likely to obtain custody than fathers, Brandes, 4 *Law and the Family New York* §§ 1:2 & 1:3, for ease of reading this article will at times refer to the target parent in the masculine gender and the alienating parent in the feminine.

<sup>2</sup> Originally published in 38 *Family Law Review*, no. 2 (Summer, 2006), a publication of the Family Law Section of the New York State Bar Association and reprinted at 22 *Law Guardian Reporter of the Appellate Divisions of the Supreme Court of the State of New York*, no. 4 (December, 2006). Part One of this article originally appeared in volume 38 *Family Law Review*, no. 1 (Spring, 2006).

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<sup>4</sup> *See, e.g.*, Joan B. Kelly & Janet R. Johnston, *The Alienated Child, A Reformulation of Parental Alienation Syndrome* 39 *Family Court Review* 249, 251 & 253 (2001).

rolling down the mountain and, thereafter, it continues to roll down forcefully under its own momentum with no further action on her part. The children have now become “corroborators”<sup>5</sup> to the alienation and, thereafter, will continue the “programme” themselves and independently resist reconciliation with the target.

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

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

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<sup>5</sup> See, e.g., *J.F. v. L.F.*, 181 Misc2d 722, 730, 694 NYS2d 592 (Family Court, Westchester County, 1999), *aff’d, sub nom, Faneca v. Faneca*, 270 AD2d 489, 705 NYS2d 281 (2d Dept., 2000).

<sup>6</sup> Richard A. Warshak, *Divorce Poison* 248 (2001).

<sup>7</sup> See, e.g., *Clawar, supra*, at 146.

How Often and  
When Alienation Occurs:

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

Alienation is more likely to occur when a parent (i) harbors intense or abiding distrust of the other parent; (ii) is convinced that the other parent is irrelevant or a pernicious or dangerous influence to the child; or (iii) believes that the other parent has never loved or cared about the child.<sup>13</sup> The alienating parent, therefore, believes that the child is in “urgent” need of

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<sup>8</sup> See, e.g., *Zafran v. Zafran*, 191 Misc2d 60, 64, 740 NYS2d 596 (Supreme Court, Nassau County, 2002) (Robert A. Ross, J.), quoting Justice Jacquelyn Silbermann in *R.B. v. S.B.*, NYLJ, Jan. 21, 2000 at 25, that "Parental Alienation (the term of art for conduct resulting in the poisoning of a child's mind against a parent) has become increasingly prevalent in troubled marriages."

<sup>9</sup> *Clawar, supra*, at 173; Deirdre Conway Rand, *The Spectrum of Parental Alienation (Part I)*, 15 Am. J. of Forensic Psychology No. 3 (1997).

<sup>10</sup> *Id.*

<sup>11</sup> *Clawar, supra*, Table 17 at 180.

<sup>12</sup> *Id.*

<sup>13</sup> Janet Johnston, *Rethinking Parental Alienation and Redesigning Parent-Child Access Services for Children Who Resist or Refuse Visitation* 6 (2001) (hereinafter “Rethinking”).

“protection from the [target] parent.”<sup>14</sup> Alienation commonly occurs when there is a history of intense marital conflict, or when a child has been “triangulated” between warring parents.<sup>15</sup> It can occur when a child is used by the alienating parent to replace the target as the central object of her affection, and frequently occurs when a parent experiences a separation or divorce as inordinately humiliating.<sup>16</sup>

Children who are “temperamentally vulnerable (anxious, fearful, dependent, or emotionally troubled)” are generally less able to withstand the inordinate stress of being placed in the middle of a high conflict divorce.<sup>17</sup> They are, therefore, “more likely to be drawn into an alienated stance.” Pre-adolescent and adolescent children 8-15 years old can be easily alienated because “they can maintain a consistent stance of anger and are more likely to make rigid moral judgments of a parent.”<sup>18</sup> Younger children, in contrast, can rarely be “as fully and consistently alienated unless they have older siblings whom they emulate or who keep them under strict partisan control.”<sup>19</sup>

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

A child whose parent has been excluded from its life will not feel closer or yearn

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 6.

<sup>17</sup> *Id.* at 6-7.

<sup>18</sup> *Id.* at 6-7.

<sup>19</sup> *Id.*

more strongly for him. Rather the child will forget about the parent or learn to disdain him. “Absence [in this situation] does not make the heart grow fonder; [rather] unfamiliarity breeds contempt.”<sup>20</sup>

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

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<sup>20</sup> *Brandes*, 4 Law & The Family, NY, Child Custody § 1:16 at 78 (2d ed., 1997).

<sup>21</sup> *Warshak*, *supra*, at 5.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Kelly & Johnston, Reformulation, supra*, at 257 (“these behaviors of the aligned parent (and his or her supporters) constitute emotional abuse of the child”); *Karen B. v. Clyde M.*, 151 Misc2d 794, 574 NYS2d 267 (Family Court, Fulton County, 1991), *aff’d sub nom.*, *Karen PP v. Clyde QQ*, 197 AD2d 753, 602 NYS2d 709 (3d Dept., 1993) (“any parent that would denigrate the other by . . . involving the child as an instrument to achieve his or her selfish purpose is not fit to continue in the role of a parent”); *Bragar v. Bragar*, NYLJ 6/21/02 (Sup. Ct., NY Co.) (Jacqueline Silbermann, J.), *quoting Safah v. Safah*, NYLJ 1/8/92 p.26 col. 5 (Sup. Ct., Suffolk Co.) (brain-washing of children is “equivalent to . . . physical abuse” and amounts to egregious misconduct); *Warshak, supra*, at 14 (“Experts regard the attempt to poison a child’s

Department, in a custody and neglect case, affirmed a finding that the mother “emotionally neglected” her child by alienating the child from the father.<sup>26</sup>

The Need for an  
Experienced  
Forensic Evaluator:

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

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relationship with a loved one as a form of emotional abuse. As with other forms of abuse, our first priority must be to protect the children from further damage.”); *Joel R. Brandes*, Parental Alienation, NYLJ 3/28/00 at 3 (“inducing parental alienation in a child is a form of child abuse, which should be punishable as abuse under the Family Court Act.”).

<sup>26</sup> *Matter of Ramazan U.*, 303 A.D.2d 516, 756 N.Y.S.2d 442 (2d Dept., 2003) (“The documented efforts of the mother to interfere with the visitation of the noncustodial parent and to alienate the child from his father are sufficient to support a finding of neglect”).

<sup>27</sup> Joan B. Kelly & Janet R. Johnston, *The Alienated Child, A Reformulation of Parental Alienation Syndrome*, 30 Family Court Review 249 at 264 (2001) (hereinafter “Reformulation”).

<sup>28</sup> *Id.*

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

Similarly, in *Giraldo v. Giraldo*,<sup>31</sup> a case which contained, *inter alia*, an allegation of alienation, the First Department reversed a Family Court for failing to obtain a forensic evaluation. *Giraldo* involved a mother who fled to the United States from her allegedly violent husband in Colombia, South America. The father then sued for custody. On the second day of the hearing the mother asked the court to appoint a forensic evaluator. The court, noting that a forensic evaluation would delay the trial by six weeks, denied the request as untimely.<sup>32</sup> The Appellate Division, however, reversed. It held that, “once it became evident that [the trial court’s] decision would turn upon . . . an evaluation of the parties” and their children, “failing to

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<sup>29</sup> *Matter of Wesley R.*, 307 AD2d 360, 763 NYS2d 76, 77-78 (2d Dept., 2003).

<sup>30</sup> *Grisanti v. Grisanti*, 4 AD3d 471, 772 NYS2d 700 (2d Dept., 2004).

<sup>31</sup> *Giraldo v. Giraldo*, 85 AD2d 164, 447 NYS2d 466 (1<sup>st</sup> Dept., 1982).

<sup>32</sup> 85 AD2d at 169.

order independent psychiatric and psychological testing” was an “abuse of discretion.”<sup>33</sup> The important and “critical” questions raised in these matters, the court held, should not be decided on limited evidence, when additional evidence could be obtained in short order. The court emphasized that the trial court’s finding that the oldest child was “brainwashed” made the need for an independent opinion even more indispensable. “Although these examinations might have taken six weeks or more, the custody issue was of such critical importance as to warrant a continuance of that length.”<sup>34</sup>

The trial court in *Zafran v. Zafran*<sup>35</sup> properly applied these principles. There the court noted that in cases in which alienation has been charged, “the court has the duty to become aware of and seek out every bit of relevant evidence and advice on the custody issues before it.”<sup>36</sup> Expert testimony, the court held, “could potentially serve as a ‘helpful tool’” when determining difficult custody disputes.<sup>37</sup> *But, see, Fallon v. Fallon*<sup>38</sup> (affirming Family Court’s denial of forensic evaluation and its transfer of custody).

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<sup>33</sup> 85 AD2d 174.

<sup>34</sup> *Giraldo*, 85 AD2d at 175.

<sup>35</sup> *Zafran v. Zafran*, 191 Misc2d 60, 64, 740 NYS2d 596 (Supreme Court, Nassau County, 2002) (Robert A. Ross, J.).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Fallon v. Fallon*, 4 AD3d 426, 427, 771 NYS2d 381(2d Dept., 2004).

Effective Treatment for Alienation:

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

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

Unfortunately, alienated children and the parent with whom they are “aligned”

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<sup>39</sup> Elizabeth Ellis, *Divorce Wars, Interventions With Families in Conflict* 225 (American Psychological Association, 2000); *Clawar, supra*, at 152.

<sup>40</sup> *Id.*

<sup>41</sup> *Clawar, supra*, at 152.

<sup>42</sup> Michael R. Walsh & J. Michael Bone, *Parental Alienation Syndrome: An Age-old Custody Problem*, 71 Fla. Bar J. 93 (1997).

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

As time marches on with little or no contact between the children and the target, and as the inexorable litigation continues through its mediation, negotiation, psychological evaluations, and ensuing therapy phases, the alienating parent and child perceive it as covert approval of their programme, further entrenching their position against the target.<sup>46</sup> “[W]ith th[is] passage of time, the child grows to be a staunch corroborator” of the alienating parent’s programme.<sup>47</sup>

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

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<sup>43</sup> *Id.* at 224-225.

<sup>44</sup> *Id.*

<sup>45</sup> *Ellis, supra*, at 224.

<sup>46</sup> *Ellis, supra*, at 224.

<sup>47</sup> *Walsh & Bone, supra*.

<sup>48</sup> *Walsh & Bone, supra*.

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

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

Moreover, because alienation can be subtle and insidious and its devastating effects potentially permanent and irreversible, most experts conclude that in severe instances the only "treatment" that prevents alienation from continuing, effectively reverses it and enables

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<sup>49</sup> *Clawar, supra*, at 107.

<sup>50</sup> *See, e.g., Johnston, Rethinking, supra*, at 7; Dr. Joan Kelly, 2005 Annual New York State Interdisciplinary Forum on Mental Health and Family Law, Resolving Custody Disputes: What Helps Children? What Hurts? (presented at the New York City Bar, June 4, 2005) at 8.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Clawar, supra*, at 149, citing a case in which a boy had to be hospitalized before the court would transfer custody to the father, and Deirdre & Randy Rand & Leona Kopetski, *The Spectrum of Parental Alienation Syndrome, Part III: The Kopetski Follow Up Study*, 23 *Am. J. Forensic Psychology* 15 (2005), citing two more cases "in which children under the age of 10 had to be hospitalized before the court was willing to take the strong action needed.

reconciliation with the target is the immediate transfer of custody to the target parent.<sup>54</sup> In every one of the reported studies of parental alienation, interventions that did not include a transfer of custody did not improve the target parent-child relationship while the transfer of custody almost always did.<sup>55</sup> The hundreds of children that were transferred and later interviewed, expressed gratitude and relief that they were compelled to see and be with their parents and get to know them.<sup>56</sup> When therapy was instituted without a change of custody, however, the alienation often

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<sup>54</sup> *Ellis, supra*, at 223-27 (citing several studies and concluding, at 225, that many experts in the field “clearly support rapid and immediate changes of custody,” and, at 224, “The similarity of PAS to *folie à deux* suggests that removal of the child from the custody of the alienating parent and immediate placement with the targeted parent may be the best intervention.”). In severe instances in which the child threatens to harm himself or others, physical custody can be transferred to some interim residence such as a friend, extended family or residential or psychiatric facility, away from the alienating parent. *Warshak, supra*, at 275.

<sup>55</sup> *Ellis, supra*, at 223-24; *Warshak, supra*, at 256; *Clawar, supra*, at 150 (“phase in” of merely some additional contact was not “especially effective” in reconciling the children with their parents but in the approximately 400 cases in which courts made severe increases of contact, often over the objections of the children, there was “positive change in 90 percent” of them); John Dunne & Marsha Hedrick, *The Parental Alienation Syndrome: An Analysis of Sixteen Selected Cases*, 21 *Journal of Divorce & Remarriage* 21 (1994) (“There were no cases in which a change of custody occurred but the alienation continued. In the other thirteen cases, various interventions were tried, ranging from therapy for each of the parents individually, therapy for the parents together, therapy for the children with the alienated parent, therapy for the children with the alienating parent, and the assignment of a Guardian Ad Litem to the case. In two of these cases, the children were evaluated as having experienced “some” or “minimal” improvement in their relationship with the alienated parent. In the other eleven cases, there was no improvement and in two of these cases, the alienation was evaluated as “worse” after the interventions.”); *Rands & Kopetsky, supra* (summarizing these and other studies and concluding, on the basis of their own study, that a “court’s decision with respect to custody and visitation [was] essential for interrupting or preventing [the completion of] alienation. Therapy as the primary intervention was ineffective for interrupting alienation and sometimes made things worse. . . . Placing the child in the custody of the [target parent] was found to be the most effective means of helping children in alienation scenarios to maintain relationships with both parents.”).

<sup>56</sup> *Clawar, supra*, at 151.

became more severe and the situation deteriorated.<sup>57</sup>

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

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

In addition, the therapist must be intimately familiar with the parties’ history, the

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<sup>57</sup> *Ellis, Clawar, Dunne & Hedrick and Rands & Kopetski, supra* n.55.

<sup>58</sup> *Clawar, supra*, at 131 *et seq.*

<sup>59</sup> *Clawar, supra*, at 139.

<sup>60</sup> *Clawar, supra*, at 140.

<sup>61</sup> *Clawar, supra*, at 132-33.

different forms and methods of alienation, and the means utilized in this particular situation.<sup>62</sup>

All this is necessary in order to know what avenues to explore or pursue.<sup>63</sup> The therapist must be experienced in dealing with alienation and, thereby, be capable of tailoring a plan of action specifically for this family.<sup>64</sup>

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

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

2. Investigate and identify the techniques used to transmit or inculcate the themes to the child.<sup>66</sup> This may be done by questioning the child in a non-judgmental manner about how he came to have the claimed knowledge, or by responding to strong emotions by saying “That seems to be a strong feeling for you. How does a feeling like that come about?”<sup>67</sup>;

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<sup>62</sup> *Id.* at 147.

<sup>63</sup> *Id.*

<sup>64</sup> *Clawar, supra*, at 152.

<sup>65</sup> *Clawar, supra*, at 132.

<sup>66</sup> *Id.* at 133.

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

3. Identify the duration and intensity of the alienation<sup>68</sup>;
4. Attempt to obtain the motives of the programmer.<sup>69</sup> This may include revenge, self righteousness, fear of losing the child, continuation of pre-divorce denigration of the target, feelings of ownership over the child, jealousy, desire for child support, loss of identity that would occur if the child left, rendering the target nonexistent by excluding him, self protection (if the alienating parent fears revelation of her shortcomings or illegal activities), attempts to maintain the relationship with the target through conflict, or the exercise of power, control or domination over the child or target. Knowledge of the motives helps develop a tailored treatment plan. Interestingly enough, in about fifty percent of the cases the alienated children were themselves aware of their alienating parents' motivations in programming them<sup>70</sup>;
5. Evaluate the degree and types of damage that have occurred or will likely result to the child if the alienation continues. This must be identified to develop a timely plan of action<sup>71</sup>;
6. Evaluate the resources available for the reconciliation, including any grandparents, religious or educational figures that might be useful in the process<sup>72</sup>;
7. Identify the risks of attempting reconciliation.<sup>73</sup> The alienating parent may

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<sup>68</sup> *Id.* at 134.

<sup>69</sup> *Id.* at 134-36.

<sup>70</sup> *Clawar, supra*, at 136.

<sup>71</sup> *Id.* at 136-38.

<sup>72</sup> *Id.* at 138.

<sup>73</sup> *Clawar, supra*, at 141.

intensify her efforts to alienate the child, and the child may suffer from confusion, loyalty conflicts, depression or social isolation.<sup>74</sup> She may also withdraw the child from the therapeutic setting or resist its effects.<sup>75</sup> Though intervention usually entails some “short-term consequences” to the children, “[i]t is usually more damaging socially, psychologically, educationally and/or physically for children to maintain beliefs, values, thoughts and behaviors that disconnect them from one of their parents . . . compared to getting rid of the[ir] distortions or false statements.”<sup>76</sup>

8. Identify and prepare for any “shut down” messages implanted within the child’s mind.<sup>77</sup> For example, the child may have been told not to believe any contrary messages presented to him or her, that “all outsiders [therapists, judges, attorneys or others intervening] are bad,” or to refrain from talking about certain issues.<sup>78</sup>

9. Determine whether the inculcation has been so intense and enduring, that reconciliation is futile.<sup>79</sup> Care, however, must be taken that hope not be give up too soon. Except in the most extreme cases alienation can be achieved by either therapy or, in more extreme cases, the transfer of custody from the alienating parent to the target parent<sup>80</sup>;

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<sup>74</sup> *Id.* at 141.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 144.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 142.

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

10. Set goals, and prepare for, the therapeutic part of the reconciliation program<sup>81</sup>;

11. Begin actively intervening in the alienation and continue to solidify the rapport, by exploring and testing the child's discomfort or grief at the current situation. This could be done by asking non-judgmental probing questions such as, "Wouldn't it be nice if you were able to have a good relationship with your dad?";

12. Prepare and introduce objective facts that challenge or question the child's distortions of reality.<sup>82</sup> This may be done by asking questions such as, "Why do you think your father's going to court is evidence that he hates you?" This can be done successfully only by following a careful sequence that begins by accepting the child's starting position, and then asking for an explanation of that position and why the child holds it. That then can be followed by separating the child's feelings from those of others and then carefully raising contradictory questions ("Dad's motives are only to see you. Is that the same as 'hatred'?") which then creates an emotional connection between the child and the target, and cognitive dissonance with the child's claimed beliefs<sup>83</sup>;

13. At the same time as the foregoing steps, facilitate the reconciliation and prevent further programming by greatly increasing the time spent with the target parent and limiting or eliminating the time spent with the alienating parent.<sup>84</sup> Significant additional contact

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<sup>81</sup> *Clawar, supra*, at 153.

<sup>82</sup> *Id.* at 144-48; *Warshak, supra*, at 251.

<sup>83</sup> *Clawar, supra*, at 147.

<sup>84</sup> *Id.* at 148-51.

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

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<sup>85</sup> *Id.* at 150.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 144.

<sup>88</sup> *Warshak, supra*, at 256; nn. 55-57, *supra*.

<sup>89</sup> *Warshak, supra*, at 273.

<sup>90</sup> *Warshak, supra*, at 273.

<sup>91</sup> *Warshak, supra*, at 274.

transmit messages to the child.<sup>92</sup>

14. Reeducation, counseling and therapy for the alienating parent, if the alienation was inadvertent, to teach her the harmful effects of the alienation,<sup>93</sup> and for the child and target parent, to teach new ways of communicating with each other and to overcome the hurt and emotional strain of the period of alienation. This therapy, however, is far different from “traditional” or “regular” therapy.<sup>94</sup> Here, the children learn to think for themselves and to themselves judge the accuracy of each parent’s allegations against the other.<sup>95</sup> They are taught that they do not have to hate one parent just to please the other, and learn skills to deal with and handle the unfair characterizations of an alienating parent.<sup>96</sup> Children might also be reminded that their cruelty toward the target would never have been tolerated by either parent when they were together.<sup>97</sup> Even when this kind of therapy does not bear immediate results, it oftentimes plants seeds that later affect the children dramatically.<sup>98</sup>

#### Alienation Cases in New York:

New York courts have long recognized the inviolate nature of visitation with the

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<sup>92</sup> *Warshak, supra*, at 275.

<sup>93</sup> *Id.* at 152.

<sup>94</sup> *See*, text at nn. 39-57, *supra*.

<sup>95</sup> *Warshak, supra*, at 251.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 252.

<sup>98</sup> *Id.* at 252; *Clawar, supra*, at 154.

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

“One of the primary responsibilities of [the] custodial parent is to assure the meaningful contact between the children and the other parent.”<sup>104</sup> “[T]he willingness of a parent to assure such meaningful contact . . . is a factor [that must] be considered in making a custody determination.”<sup>105</sup> “[A] custodial parent’s interference with the relationship between a child and [the] noncustodial parent [is] `an act so inconsistent with the best interests of the child as to per

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

<sup>100</sup> *Id.*

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

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

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

<sup>104</sup> *Young*, 212 AD2d at 122 (quoting *Raybin v. Raybin*, 205 AD2d 918, 921).

<sup>105</sup> *Young, supra* (citing *O’Connor v. O’Connor*, 146 AD2d 909, 910; *Lohmiller v. Lohmiller*, 140 AD2d 497, 498).

se raise a strong probability that the offending party is unfit to act as a custodial parent.”<sup>106</sup>

Interference with visitation, therefore, is a sufficient reason to change custody away from the heretofore custodial parent.<sup>107</sup>

The Appellate Division, Second Department has recognized the detrimental and insidious effect of alienation.<sup>108</sup> In *Young v. Young*, it recognized that “the psychological poisoning of a young person’s mind to turn him or her away from the noncustodial parent” has “the potential for greater and more permanent damage to the emotional psyche” of the child than merely denying access to the child.<sup>109</sup>

*Young* involved four children who ranged in age from 7 to 12. Their mother interfered with the father’s visitation by “frequently ma[king] other plans or arrangements for the children on the dates and times that the father was to have visitation” and by making several false allegations of sexual abuse.<sup>110</sup> The father moved for a change of custody but the Supreme Court denied his motion. The Second Department, however, reversed. The Appellate Division found that “[t]he mother’s testimony was devoid of any understanding or recognition of why it is

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

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

<sup>108</sup> *Young*, 212 AD2d at 115.

<sup>109</sup> *Id.*

<sup>110</sup> *Young*, 212 AD2d at 120.

important for her children to have a relationship with their father.”<sup>111</sup> “[I]f left with their mother,” the Appellate Division found, “the children would have no relationship with their father given the mother’s constant and consistent single-minded teaching of the children that their father is dangerous. She has demonstrated that she is unable and unwilling to support the father’s visitation; and it was, therefore, an improvident exercise of discretion to deny the father’s petition for a change of custody.”<sup>112</sup> This holding is consistent with many others of the Second Department.<sup>113</sup>

The First Department too, in *Renee B. v. Michael B.*,<sup>114</sup> reversed a Family Court that refused to transfer custody from the mother to the father. “It has been shown that [the mother] attempts to exclude [the father] from the child’s life. The Clinical Director and the psychiatrist who met with all concerned believe that, if awarded custody, she will continue to do

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<sup>111</sup> *Id.*

<sup>112</sup> *Young*, 212 AD2d at 115.

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

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

so. Such acts are `so inconsistent with the best interests of the children as to, per se, raise a strong probability that the mother is unfit to act as custodial parent.’”<sup>115</sup>

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

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

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

The court, however, denied the father’s application to deem his son constructively emancipated and, therefore, no longer entitled to support. “[I]t was not [the son’s] free choice to reject the love and guidance of his father. The evidence clearly established that [the son] was a

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<sup>115</sup> 204 AD2d at 59.

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

hostage in [his mother's] war against [his father]. Time and again he was fed inflammatory and hurtful information regarding adult issues in [his mother's] attempt to retaliate against [the father] for leaving the marriage.” Therefore, the court held, it would be inappropriate to punish the child by cutting off his support.

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

In *Zafran v. Zafran*<sup>117</sup> (*Zafran I*) the mother accused the father of alienating the children against her. Justice Ross cited to one of Justice Silbermann's decisions in which she noted that parental alienation “has become increasingly prevalent in troubled marriages.”<sup>118</sup> He noted that courts have been sensitive to parental alienation though they have not formally adopted it as a “syndrome”<sup>119</sup>:

New York courts appear to have embraced the concept of parental alienation in

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

<sup>118</sup> *Id.* 191 Misc2d at 64.

<sup>119</sup> For a discussion of the distinction between parental alienation and parental alienation syndrome see Part One n.13, *infra*.

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

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

At the conclusion of the trial (*Zafran II*), the court found that alienation had in fact occurred.<sup>123</sup> The court noted that while the mother “endured” the alienation, “the emotional abuse only escalated and this seemingly interminable litigation lingered on.”<sup>124</sup> The court characterized the proceedings as “custody litigation purgatory.”<sup>125</sup> The alienation of a parent, the court noted, “is a struggle that no parent should endure and one which this Court felt compelled

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

<sup>121</sup> *Id.* 191 Misc2d at 64.

<sup>122</sup> *Id.*

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

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

to act upon.”<sup>126</sup> The court permitted custody of the two older children to remain with the father, and of the younger child to remain with the mother, but directed that all of the parties and children attend a psychologist who was appointed to serve as case manager and family therapist for the family. The court hoped that this scheme would stop the alienation and warned that noncompliance with its directives would result in a referral to the county attorney for possible commencement of neglect proceedings. Justice Ross was affirmed on appeal.<sup>127</sup>

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

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

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

The loving way in which the children perceive their mother, and the way in which

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<sup>126</sup> *Id.*

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

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

<sup>129</sup> *J.F.*, *supra*, 181 Misc2d at 723.

they uncritically describe her as being perfect, stands in stark contrast to their descriptions of their father. Their opinions about their father are unrealistic, misshapen and cruel. They speak about and to him in a way which seems, at times, to be malicious in its quality. Nothing in the father's behavior warranted that treatment. The psychiatrists testified that the children are aligned in an unhealthy manner with the mother and her family. This is evidenced not only in the testimony of the father but also in the in camera interview. They repeatedly refer to the mother's family as "my family," but they do not refer to the father or his family that way. Both children used identical language in dismissing the happy times they spent with their father as evidenced in the videotape and picture album as "Kodak moments." They deny anything positive in their relationship with their father to an unnatural extreme.<sup>130</sup>

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

In the instant case, the children do not want to visit with their father. With the passage of time, these children have become "staunch corroborators" of their

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<sup>130</sup> *Id.* 181 Misc2d at 725.

<sup>131</sup> *Id.*, 181 Misc2d at 728.

<sup>132</sup> 181 Misc2d at 729 (*citing Dagher v. Dagher*, 82 AD2d 191, *aff'd*, 56 NY2d 938).

<sup>133</sup> 181 Misc2d at 731-32.

<sup>134</sup> 181 Misc2d at 731.

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

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

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

. . . .

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

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<sup>135</sup> *Id.* 181 Misc2d at 730 (footnote omitted).

<sup>136</sup> 181 Misc2d at 731.

<sup>137</sup> 181 Misc2d at 730.

cooperate in such therapy.<sup>138</sup>

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

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

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

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

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

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<sup>138</sup> *Id.* 181 Misc2d at 732.

<sup>139</sup> *Id.* 181 Misc2d at 732-33.

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

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

<sup>142</sup> *Id.* 151 Misc2d at 801.

<sup>143</sup> *Karen PP v. Clyde QQ*, 197 AD2d 753, 602 NYS2d 709 (3d Dept., 1993).

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

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

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

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

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

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

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

<sup>145</sup> *Citing, Matter of Nehra v Uhlar*, 43 NY2d 242, 248.

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

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

the son to the mother in order to remedy the deteriorating relationship.<sup>148</sup>

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

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

*K.L. v. M.L.*<sup>151</sup> involved a mother who made false allegations against the father during the divorce action. Her *paramour* filed a complaint against the father accusing him of sexually molesting his six year old son. The mother also told her oldest daughter that she was “a horrible daughter,” “didn’t deserve to live” and sent her to live with her father.<sup>152</sup> Another time she told her daughter that the father was abusive and that “she hoped [she] did not end up with someone like him.”<sup>153</sup> She took the daughter’s cell phone away, preventing her father from contacting her, and did not forward notices of school or other important events, causing the father to miss many of them. The trial court found that the record “clearly establishes parental

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<sup>148</sup> *Id.*

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

<sup>150</sup> 214 AD2d at 566.

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

<sup>152</sup> *Id.* at 4.

<sup>153</sup> *Id.* at 6.

alienation” by the mother against the father.<sup>154</sup> It concluded that the mother’s “anger and hostility . . . made her unfit to be the custodial parent since her attitude would substantially interfere with her ability to place the needs of the children before her own in fostering a continued relationship with the noncustodial parent.”<sup>155</sup> Accordingly, the court awarded the father custody of the parties’ children.

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

#### The Court’s Duty and Role:

In a custody or visitation contest the Court sits, not merely as an arbiter between two adversary parties, but “as *parens patriae*<sup>157</sup> of the young children.”<sup>158</sup> As *parens patriae*, the Court must protect these children who, because of their age, are unable to protect themselves, and because of their feuding parents, have no effective protectors.<sup>159</sup> As the Court of Appeals

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<sup>154</sup> *Id.*

<sup>155</sup> *Id.* at 7 (quotations and citations omitted).

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

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

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

<sup>159</sup> *In re Sayeh R.*, 91 NY2d 306, 670 NYS2d 377 (1977); *see, e.g., NY Const*, art XVII, § 3.

noted, “The burden on a Judge when [s]he acts as *parens patriae* is perhaps the most demanding which [s]he must confront in the course of h[er] judicial duties. Upon h[er] wisdom, insight and fairness rest the future happiness of h[er] wards.”<sup>160</sup> The Court must place itself in the position of a "wise, affectionate and careful parent" and provide for the child accordingly.<sup>161</sup> Thus, even when a child has been programmed to believe that contact with the non-custodial parent is harmful and that he is better off having no contact with him, the court must look behind the reasons and do what is in the long-term best interests of the child. Courts bear a particular responsibility to undo the damage since, typically, it was the court’s initial grant of authority to the alienating parent that made the alienation possible. Courts may not simply throw their hands up in abdication of this very difficult situation.<sup>162</sup>

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<sup>160</sup> *Lincoln v. Lincoln*, 24 NY2d 270 (1969) (gender changed).

<sup>161</sup> *Finlay v. Finlay*, 240 NY 429 (1925).

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