

Commentary: Children and Divorce

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“The first thing we do, let’s kill all the lawyers.”¹ Although the quote in context is complimentary to members of my profession, popular culture uses it derogatorily in its stand-alone literalness. Divorce and custody matters provide innumerable scenes on the basis of which reviewers can support their claim for one or the other as the interpretation most suited to members of the family bar. No one who practices family law (well) or encounters clinically its cast of characters underestimates the importance of context and motivation as roles are played out at home and on the courtroom stage. Lines delivered, if they are truly to be understood, must be heard in the context of the overall drama in its dynamic unfolding. For example, as each character justifies his or her position with the recurring phrase “best interest of the children” the observer of context recognizes quickly that the phrase means that “my objectives should prevail.”

Dr. Johnston contributes, in the preceding article,² valuable context for practitioners to address another phrase bantered about for adversarial advantage: Gardner’s controversial idea of “parental alienation syndrome” (PAS)^{3,4} and the related, more generalized idea of “parental alienation” (PA). How lawyers make use of Dr. Johnston’s research with their clients depends on how they interpret their roles in the divorce/custody drama. With which persona do they envelop themselves? Are they take-no-prisoners adversaries or, alternatively, counselors who determine that their purpose is to provide a broad and long-term view to clients, especially parent clients?

The former favor the traditional view of litigation as the arena of winners and losers. They see themselves as guardians of zealous advocacy with the obligation to advance the client’s agenda as if the client

was the sole hero or heroine whose interests are at issue in his or her family’s case. At this end of the spectrum, they can wrap themselves in the mantle of Gardner’s terminology. As Dr. Johnston points out: “attorneys have vilified the aligned parent and argued for court orders that are coercive and punitive. . . .” Or, as Parley pointed out in a recent issue of the *Journal*:

To the extent that blame and guilt persist in the system and clients express such feelings about each other, their lawyers inject that into their advocacy. This plays a role in the perception that lawyers heighten the tensions in divorce cases. In fact, the lawyers’ conduct that results in the heightened dispute generally derives from the lawyers’ belief that clients want that kind of advocacy [Ref. 5, p 30].

Similarly, Connecticut’s Commission on Divorce, Custody, and Children acknowledged recently that: “Some parents and their advocates abuse the divorce and custody determination process. . . [consequently] wasting valuable system resources, prolonging the conflict and cost of divorce, or undermining parenting arrangements” (Ref. 6, p 9). The Commission sent to Governor John G. Rowland a series of recommendations for administrative, legislative, and judicial changes to ameliorate the effect of parental conflict and the divorce process on children. The Commission recommended, for example: “Revise the Rules of Professional Conduct to require that attorneys inform their clients of the potential adverse effects of certain parental and attorney behavior on children during the divorce or custody determination process” (Ref. 5, p 26). In this and in other recommendations, this commission added its voice to others in the understanding that the practice of family law requires approaches and training different from other forms of civil litigation. In its words: “Family matters require special skills and education for those practicing in this area” (Ref. 6, p 26).

Dr. Johnston reminds us that the extent of the problem of parental alienation is unknown and that

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there are multiple factors that may contribute to the refusal of children to have contact with a parent. She acknowledges that her research is preliminary, exploratory, methodologically limited, and largely descriptive. Correlation clearly is not causal explanation. For an attorney to argue that a child's refusal to see a parent must be caused solely by the conduct of the aligned parent is unsupported by the research. Nevertheless, she provides us with research that verifies the experience of family practitioners and collaterals who deal with divorcing families: to understand the family, one must view it as a system.

In the article, Dr. Johnston cautions appropriately that a "well conducted custody evaluation of a particular family is likely to be far more valid, and it may reach very different conclusions from those reported" (Ref. 2, p 168). Whether we review her conclusions about the mother or the father, it is clear that there are a variety of factors associated with children who refuse contact with a parent and with the parents themselves. It is to be hoped that the idea that such cases are multidetermined will permeate the understanding of those tempted to insinuate PAS or PA into custody disputes. Gardner's work, in the hands of practitioners favoring the take-no-prisoners approach to family matters and untrained in critical analysis of psychological research methodology, can become little more than one more prop with which to beat the opposing side. As Parley noted:

[L]egal education does not really prepare lawyers to handle the full range of issues, both legal and nonlegal, that can arise in any divorce case. The principal focus in law school is on the substantive law or legal procedures, and law professors, as nonpracticing lawyers, may be particularly unsuited to address the psychological elements that lawyers need to learn to handle divorce cases adequately [Ref. 5, p 29].

At the very least, opposing counsel will have something other than Gardner to remind family judges that a monocausal model is flawed.

Dr. Johnston's work redirects us to a model that "point[s] to the need for therapeutic interventions that are family-focused and include all parties involved in the dynamics—the child and both the aligned and rejected parents—with collaborative mental health and legal professionals who seek to avoid ongoing litigation. . ." (Ref. 2, p 169). In short, the divorce and custody "system" must continue to find effective ways to assist the family system through the upheaval. Whether there is an allegation of PAS, PA, or simply a family stuck in the inertia of blame, Dr. Johnston's research provides a reminder that it can be useful for the parties to the divorce and custody conflict to look within themselves for options of how each can change his or her own, rather than the other's, behavior to hasten the transition to a postdivorce parenting plan and style that best serves the interests of the children. For, with that mind set, there can be congruence between advocacy of their own agenda and the best interests of their children.

The parties are not merely husband and wife but also father and mother. Representation of the client as spouse must include representation of the client as parent. The clients, just as the issues, in the custody and divorce process are multidimensional. In such a model, practitioners in family matters can assist clients to become wound healers for themselves and their children.

References

1. Shakespeare W: Henry VI, Part 2, act 4, scene 2, lines 76–7
2. Johnston J: Parental alignments and rejection: an empirical study of alienation in children of divorce. *J Am Acad Psychiatry Law* 31:158–70, 2003
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4. Gardner RA: The Parental Alienation Syndrome (ed 2). Cresskill, NJ: Creative Therapeutics 1998
5. Parley L: Commentary: a rose of a different color. *J Am Acad Psychiatry Law* 29:29–32, 2001
6. State of Connecticut: Report of the Governor's Commission on Divorce, Custody and Children. 9 December 2002