



# FAMILY NEWS & VIEWS

A PUBLICATION OF AFCC-NEW YORK

## Consultants, Records, and Protecting Families



By Jeffrey P. Wittmann, PhD. and David M. Martindale, PhD, ABPP

Portions of this article previously appear in an article by the junior author. Martindale, D. A., (2016). New York's judicial straight-jacket. *The Matrimonial Strategist*, 34(11), 1ff.

### IN THIS ISSUE

**Page 1:**  
**Consultants, Records, and Protecting Families**

**Page 5:** (cont'd from page 1)  
**Parental Alienation: Child Abuse? Reportable?**

**Page 9:**  
**The Withholding of a Religious Divorce (Get) as a Form of Domestic Abuse: Is there a Remedy?**

### Current Procedures

For several years, there has been fierce debate regarding if, and how, litigants in New York should have access to the reports prepared by evaluators in litigated custody/access disputes. A related debate, which is the focus of this article, involves access to such reports and related files/documents by retained forensic consultants who conduct work product reviews (peer reviews), and who subsequently, either provide litigation support services to the retaining attorneys or provide testimony. The authors have provided both services in New York State and in other states. In states other than New York, access to forensic reports and underlying, related data has been provided in electronic form, and without restrictions that constrain a consultant's ability to efficiently provide services to the retaining law firm. In sharp contrast, New York courts have erected barriers to access, and have often barred electronic transmission. In our view, the restrictions commonly encountered are disadvantageous to all involved in the adjudicative process.

A common scenario follows. An attorney decides she needs a forensic consultant, retains one, and then asks the court's permission to share a forensic custody evaluation, along with other materials requested by the consultant, with the professional they have hired. The court responds: "Before

*Continued on page 2*

*Public confidence in all of the system's "working parts" requires transparency.*

### Parental Alienation: Child Abuse? Reportable?

by Robert A. Evans, Ph.D.

The Federal Child Abuse and Treatment Act of 2010, defines child abuse and neglect as, "any recent act or failure to act on the part of a parent or caretaker which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm." Child abuse and neglect, also referred to as child maltreatment,

*Continued on page 5*

granting access for your consultant to those items, he or she must sign the court's affidavit regarding the handling of those records." The hiring attorney then sends the affidavit to the expert and the expert reads that he must agree to one or a combination of the following rules: (1) Make no copies of the documents; (2) Take delivery only in hard copy – no electronic transmission; (3) Never quote the contents of the materials in any document; (4) Return all materials to the court at case-completion.

## Positive Intention

Such restrictions on the activities of a consultant are well-intentioned. It is assumed that Supreme and Family Courts seek to protect families from public disclosure of sensitive family information. There is also the concern that, were a consultant to make a copy of a forensic report or other sensitive materials for a litigant, the materials could be weaponized by an angry parent and distributed in a damaging or embarrassing manner. Finally, there is always the possibility that information gathered on minors could be shared or indiscriminately released, creating embarrassment or other harm to the children. Few would disagree that the content of forensic reports and underlying data are able to embarrass or damage family members.

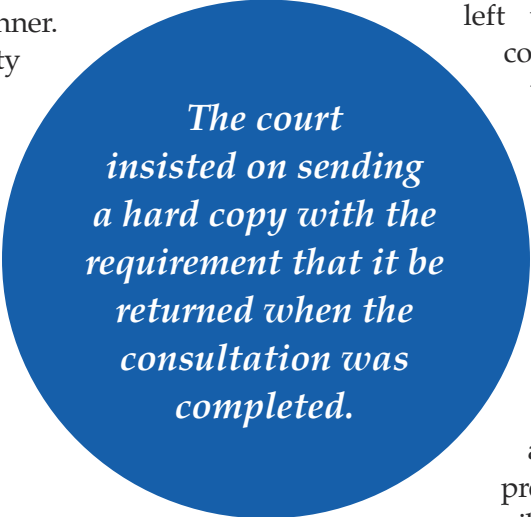
## Not All Well-Intentioned Acts Produce Favorable Outcomes

New York's courts are to be commended for actively exploring means by which the detrimental effects of custody/access litigation on the litigating families might be mitigated, but the disadvantages of the restrictive procedures outlined above are significant. They hamper the efforts of conscientious family law and mental health professionals to obtain the best outcomes for children.

**Safe transmission and file protection:** The presumed objective of prohibiting electronic transmission and document copying is the protection from disclosure (or misappropriation) of sensitive information concerning the families who have sought the courts' assistance in resolving custody-related disputes. Improvements in encryption technology have made the electronic transmission of files far less susceptible to loss, destruction, or mishandling

than transfer by means of the postal service or services such as FedEx and UPS. The first author recently signed an affidavit restricting how a forensic report was to be handled: The court insisted on sending a hard copy with the requirement that it be returned when the consultation was completed. Human error caused that court to send it to a wrong address (To our knowledge the inaccurately mailed copy was never recovered).

In electronic form, evaluators' reports can be encrypted. Before being transmitted, they can be password protected. After the documents have arrived at their intended destinations, document password protection can continue to be maintained, and the computers on which the documents now reside can be password protected. In the field of law, as in the field of psychology, we err significantly when we fail to take common human shortcomings into consideration as we develop our professional procedures. Paper documents, spread out on law firms' conference tables, are often left unattended. Documents stored in computers can be rendered unreadable with a mouse-click.



*The court insisted on sending a hard copy with the requirement that it be returned when the consultation was completed.*

### **Copying and process transparency:**

There are few, if any, technologies that cannot be used in the service of malicious objectives, but copiers and scanners have no mens rea. Judges who prohibit lawyers from scanning documents are depriving attorneys and their consultants of an inestimably valuable tool, and are presumably doing so only because it is possible to misuse scanning technology.

Forensic psychological consultants conducting work product reviews are likely to want to make marginal notations and to highlight important words and phrases. With this in mind, prudent reviewers who respect process transparency immediately copy documents that have been sent to them. By taking this step, each document sent to a reviewer is preserved in precisely the condition in which it was received.

Public confidence in all of the system's "working parts" requires transparency. Just as the work of evaluators should be subject to scrutiny, so, too, should the work of reviewers be closely inspected. Preservation by reviewers of the original documents sent to them facilitates an examination by others of reviewers' procedures. If, when a reviewer receives a report, it already contains a retaining attorney's notations, preservation of the

original document (and production of that document) facilitates exploration of the impact on the reviewer of the retaining attorney's perspectives.

With respect to the issue of inappropriate disclosure of litigation-related documents, the judicial system's goal is clear; so, too, is the path to that goal. Documents intended for review might be accompanied by a court order addressing the use of the reports by attorneys and referencing (without naming) consultants who may be hired by those same attorneys (see below).

*Licensed consultants, usually psychologists or psychiatrists, should be allowed to work for their clients (attorneys, courts, etc.) unencumbered by excessive service-restricting rules...*

**More efficient reviewing:** When attorneys and consultants review pdf searchable documents, they are able to search with remarkable efficiency for names, words, phrases, and numerical data. Such searches make it possible to analyze documents in ways that would not otherwise be possible, to obtain quantitatively and qualitatively superior information, and to accomplish the task in significantly less time. During trial preparation, finding a key word or sentence in a forensic report can be critical. Finding specific words, phrases, or sentences in reports that are often lengthy is time consuming. Since consultants are paid for time expended, restrictions on the use of electronically transmitted word searchable documents adds to the expenses incurred by litigating families.

**Return to Sender:** We know of no mental health profession regulated by the state that does not require practitioners to create and preserve records documenting their work. In addition, most regulated disciplines have ethical requirements for the retention of records. In requiring forensic mental health consultants to return their files following adjudication of the cases in which they have consulted, courts are directing the consultants to ignore ethical obligations and regulatory requirements. In addition, when forensic consultants return records to the court or to attorneys, they are surrendering the material forming the basis of the professional services they rendered and the documents that they would need to defend themselves in the event of a malpractice action or a board complaint. To the best of our knowledge, forensic consultants in fields other than mental health (such as forensic accountants) are not required to return their files.

**Forced Disclosure of Consultant's Involvement/Identity:** The submission to the court of a consultant's affidavit/

affirmation identifies the consultant. Ordinarily, attorneys are permitted to retain undisclosed consultants, and to share with those consultants whatever documents are in the possession of the attorneys and needed by the consultants. We have experienced cases in which the requirement for the signing of a court-affidavit by a consultant created a substantial dilemma for attorneys who had good procedural and strategic reasons for wanting to delay disclosure of a consultant's involvement, because the affidavit yielded unwanted and premature disclosure to opposing counsel.

**No Quoting:** Prohibitions on quoting from evaluators' reports create insurmountable obstacles to effective articulation by consultants of the bases for opinions expressed by them regarding the reports that they have reviewed. Whether functioning as a testifying expert or as behind-the-scenes consultant providing litigation support services, it is impossible to offer reasoned, sound professional opinions without being able to share (In written memos or reports) the aspects of the forensic report or documents that form the foundation for that opinion. To do so would amount to offering an opinion without a basis.

**Professional Mistrust:** As noted above, we are unaware of other court-involved disciplines (e.g., forensic accountants, medical specialists, experts in the biological sciences) the members of which are required to surrender the documents that form the bases of their testimonial opinions. It appears that with other professions the courts are willing to trust that practitioners will abide by state laws and ethics codes in maintaining the safety of sensitive materials. Why are medical experts on, for example, "brittle bone syndrome" not asked to sign affidavits requiring that the x-rays and cat-scans that formed the bases of their opinions be returned to the court at the completion of a case?

## **New Possibilities**

Our position is the following: Licensed consultants, usually psychologists or psychiatrists, should be allowed to work for their clients (attorneys, courts, etc.) unencumbered by excessive service-restricting rules, allowing them to efficiently and ethically contribute to fact-



finding efforts and the achievement of justice for families. A consultant's easy-access to, and freedom to work with, materials required to form reliable expert opinions are one component of the protection of the due-process rights of parents and children. Such efforts require that each side be able to thoroughly, and with relative alacrity, do the pre-trial work that needs to be done. Consultants should be trusted to behave ethically and in compliance with the relevant laws of their jurisdiction and there should be professional consequences for failure to do so. Electronic transmission and storage of forensic reports and files should be allowed, in light of the advantages alluded to above.

We recommend that courts, in preparing orders, include the elements listed below.

1. Documents provided to consultants, and any information extracted from those documents, are to be used only in the identified case, and may not be used for any other purpose without the express written permission of the court.
2. Documents provided to consultants, and any information extracted from those documents, may be shown to litigants during discussions with the litigants, but no materials in the consultant's file related to a forensic report may be copied for use by the litigants.
3. Neither the documents, nor information contained in them, are to be discussed with, or disclosed to, the children.

If the Office of Court Administration or particular court districts decide that affidavits by consultants regarding forensic reports and supporting materials remain necessary, we recommend that the affidavit/affirmation be filed with the hiring law firm, rather than with the Court. Such a procedure would enable law firms to retain undisclosed consultants – a procedure that, in our experience, is accepted in jurisdictions other than New York. We also recommend that the restrictions articulated in the affidavit/affirmation be limited to those that follow.

1. The consultant agrees to protect the case-materials provided by the hiring law firm from inappropriate disclosure, in accordance with applicable state and federal law, and with the ethical principles guiding the consultant's profession.
2. The consultant agrees not to give a copy of the case-materials provided by the hiring law firm to anyone.
3. The consultant agrees not to give to anyone other than members of the retaining law firm any materials prepared by the consultant that reference the contents of the forensic case-materials.
4. Electronic transmission of case-materials to the consultant by the law firm, or to the law firm by the consultant, will be affected using secure electronic means that provide adequate protection from inadvertent disclosure of the materials.

### Jeffrey P. Wittmann, PhD.

Dr. Wittmann is a licensed psychologist and trial consultant whose practice concentrates on trial support for attorneys in custody and access matters and on forensic peer reviews. He serves as a consultant for major law firms nationally and previously held an appointment as Adjunct Clinical Professor at SUNY Albany where he taught forensic psychology at the doctoral level. Dr. Wittmann is a recognized expert on the intersection of law and psychology. He has served on multiple professional editorial boards and is the author of "Custody Chaos, Personal Peace" (Perigee, 2001). Together with Timothy Tippins, Esq., he is the author of Empirical and Ethical Problems with Custody Recommendations: A Call for Clinical Humility and Judicial Vigilance, an award-winning article published in the Family Court Review in 2005. His most recent book is entitled: "Evaluating Evaluations: An attorney's Handbook for Analyzing Child Custody Reports" (MatLaw, 2013).



### David M. Martindale, PhD, ABPP

David Martindale, board certified in forensic psychology by the American Board of Professional Psychology, functions as a consultant to psychologists, attorneys, and state regulatory boards. He received his license as a psychologist in New York, in 1972, and received certification as a health service provider in psychology from the National Register in 1978. Between the years 1986 and 2000, Dr. Martindale performed court-ordered evaluations in New York. In his capacity as a forensic psychological consultant, he has conducted work product reviews for psychologists, for attorneys, and for psychology boards. He has provided services in 34 states. Dr. Martindale is the Reporter for the Association of Family and Conciliation Courts' Model Standards of Practice for Child Custody Evaluation, and served on the Association of Family and Conciliation Courts' Task Force on Child Custody Consulting.



The opinions in this article are that of the authors and do not represent the opinions of AFCC-NY.

# Parental Alienation: Child Abuse? Reportable?

includes all forms of violence against children. There is no uniform legal definition of each type of child abuse, including psychological maltreatment (PM), across state child abuse statutes (Baker, 2009), which are found in one or more of civil or criminal statutes.

Those of us who have been working within the field of Parental Alienation recognize that Parental Alienation could be considered a form of child abuse. So, shouldn't it logically follow that if the professional field recognizes Parental Alienation as a form of child abuse then, it should be reportable to child protection and law enforcement organizations? Child protection agencies personnel in turn need to be trained about the significant, abusive of parental alienation consequences that can wreak havoc on children.

## Parental Alienation

Parental Alienation refers to a child rejecting a parent without justification and includes the child displaying a strong alignment with one parent while rejecting or resisting a relationship with the other. The rejection is unwarranted based on a child's actual experience with that parent. In addition, prior to the child's rejection there is evidence of a prior normal, loving, warm relationship with the rejected parent. Parental Alienation is active when the tactics or strategies used to alienate a child are present but the child has not rejected the parent as of yet. This is a critical distinction in that frequently observers may conclude that alienation is not present because the child is maintaining a relationship with the targeted parent. However, if the situation continues uninterrupted the child's rejection is surely to follow. The reason for this lies in the fact that the child cannot continue to be responsive, affectionate, and overtly loving to the targeted parent for fear of being rejected by the alienating parent. Parental Alienation is most usually apparent when there is a high level of conflict surrounding the relationship breakdown of the parents, or at some later stage in the relationship demise.

*The alienating behaviors include forms of visitation blocking or interference, false allegations of abuse, harm, or neglect...*

Parental Alienation refers to specific behaviors that an individual (the alienating parent) engages in that are intended to disrupt and even terminate a relationship between a parent and a child or his or her children. These behaviors have been described by a number of authors as *brainwashing, programming, indoctrination, etc.* As the "brainwashing" process persists in the presence of a child or is directed on to a child, the child begins to accept the programming thoughts as his or her own.

According to Dr. Stephen Ceci (1995) young children "are vulnerable to source misattributions when they are repeatedly encouraged to think about or visualize events that never occurred. Many of them appear to think that they actually experienced events that they had only imagined (p.222)." In addition, Dr. Ceci (1995) discussed scripts in children's reporting. He stated, "...if children are persistently interviewed, they may actually acquire facts or scripts about the alleged event, even if they had no previous knowledge of this information prior to the series of interviews (p. 257)." One can easily substitute "interviewing" and replace it with "told or instructed" and the result will be the same, a false memory.

The alienating behaviors include forms of visitation blocking or interference, false allegations of abuse, harm, or neglect; a noticeable deterioration of the relationship between the targeted or rejected parent and child; and a child's exaggerated fear of the alienating parent. The exaggerated fear of the alienating parent can include a fear of being rejected by that parent, a fear of displeasing or upsetting that parent, or even a fear of physical harm in some extreme cases.

As the accommodation and assimilation of these alienating behaviors proceeds, the symptoms of Parental Alienation emerge. There are eight specific symptoms of Parental Alienation that were initially reported in the literature (Gardner, 1992) and these are:

**The campaign of denigration** refers to a child's view of the "hated" or targeted parent. First, the campaign of denigration is executed by the accusing or alienating parent in his or her indoctrination of the child. The other component is the child's own contribution in this denigration process. The reason "hated" is in quotes is

because these children actually do not hate their parent, regardless of what words they use referencing them. They have to say that they “hate” their parent because they fear the alienating parent; they are literally held hostage.

**Weak or frivolous rationalizations for the deprecation** refers to a child not wanting to be with a parent for reasons that do not warrant such a position.

**Lack of ambivalence** refers to the alienated child’s “all good” portrayal of the alienating parent and “all bad” portrayal of the rejected or targeted parent.

**The “Independent Thinker” phenomenon** is where the child maintains that his or her criticisms of the rejected or targeted parent are his or her own independent thoughts and not the product of coaching by anyone especially the alienating parent.

**Reflexive support of the alienating parent in the parental conflict** refers to the child’s consistent loyalty to the alienating parent’s position, never defending or siding with the rejected / targeted parent.

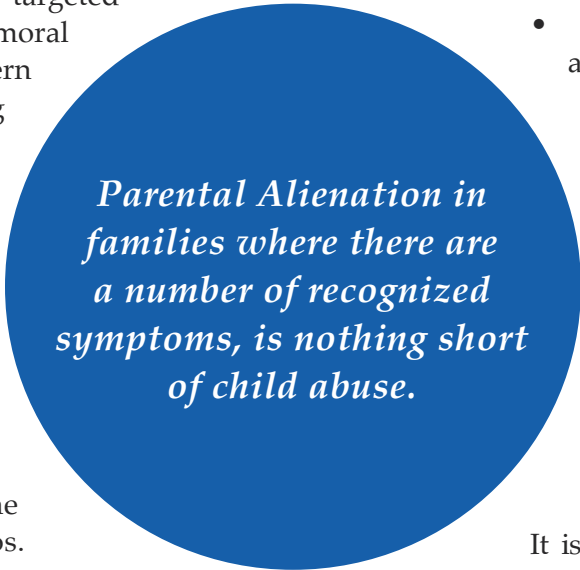
**Absence of guilt over cruelty to and/or exploitation of the rejected/target parent** represents a diminishing and ultimate extinction of the child’s ability to empathize with others and not just with the targeted parent. It is tied to conscience and moral choice and may set a lifelong pattern of reacting to stress and threatening situations.

**Presence of borrowed scenarios** refers to the making up of stories and incidents in the furtherance of the vilification of the rejected / target parent. The quality of the stories and the details of the incidents often reflect that of the alienating parent, hence the “borrowed” nature of the scenarios.

**Spread of animosity to the extended family of the rejected/target parent** refers to a child being alienated not only from the rejected / target parent, but from the rejected parent’s entire life, his or her activities, and his or her loved ones such as grandparents, aunts, uncles, etc. As with the rejected parent, these children had a history of having a loving and caring relationship with the extended family members.

Baker and Fine (2013) identified some of the strategies used by alienating parents which can include the following.

- Badmouthing
- Limiting contact
- Interfering with communication
- Interfering with symbolic communication
- Withdrawal of love
- Telling the child that the targeted parent is dangerous
- Forcing child to choose
- Telling the child that the targeted parent does not love him or her
- Confiding in the child
- Forcing child to reject the targeted parent
- Asking the child to spy on the targeted parent
- Asking the child to keep secrets from the targeted parent
- Referring to the targeted parent by first name
- Referring to a stepparent as “Mom” or “Dad” and encouraging child to do the same



*Parental Alienation in families where there are a number of recognized symptoms, is nothing short of child abuse.*

- Withholding medical, academic, and other important information from targeted parent / keeping targeted parent’s name off medical, academic, and other relevant documents
- Changing child’s name to remove association with targeted parent
- Cultivating dependency / undermining the authority of the targeted parent

It is this author’s position that Parental Alienation in families where there are a number of recognized symptoms, is nothing short of child abuse. In a study conducted by Spinazzola, Ford, Briggs, Liang, Layne, Pynoos, Stolbach (2014), psychologically maltreated children exhibited equivalent or greater levels of behavioral problems, symptoms and disorders compared with physically or sexually abused children.

The “Practice Guidelines” of The American Professional Society on the Abuse of Children (APSAC) (2017) defines Psychological Maltreatment as Child Abuse.



"The CDC states, 'Child maltreatment is any act or series of acts of commission or omission by a parent or other caregiver that results in harm, potential for harm, or threat of harm to a child (p. 14).' Alienation, a form of Psychological Maltreatment, is well documented to cause emotional disturbances in children and even great harm as they mature (A. Baker, 2007).

The APSAC guidelines go on to define the term Psychological Maltreatment as a "repeated pattern of extreme incident(s) of caretaker behavior that thwart the child's basic psychological needs (e.g., safety, socialization, emotional and social support, cognitive stimulation, respect) and convey a child is worthless, defective, damaged goods, unloved, unwanted, endangered, primarily useful in meeting another's needs, and/or expendable (p. 147)." "Psychological Maltreatment includes acts of commission (e.g., threats by a caregiver toward a child) and acts of omission (e.g., repeatedly ignoring a child's bids for attention or for comfort when distressed) (p. 147)." While there are several subtypes of Psychological Maltreatment, the most relevant to Parental Alienation are Exploiting/Corrupting, Terrorizing, Isolating, Mental Health, Medical, and Educational Neglect.

Exploiting/Corrupting is when a caregiver's acts encourage a child to develop inappropriate behaviors and attitudes. Encouraging a child to reject another parent or setting the stage via the use of specific strategies would fall under this form of maltreatment. Included in this form of maltreatment is the restricting, interfering with, or directly undermining the child's important relationships. Restricting communication with the other parent or telling the child the lack of communication is due to the other parent's lack of love for the child are specific Parental Alienation examples.

Terrorizing is when a caregiver threatens or is likely to physically hurt the child or place the child's loved ones in frightening situations. Specifically cited under this form of maltreatment is placing the child in a loyalty conflict by making the child unnecessarily choose to have a relationship with one parent or the other.

Isolating is when the caregiver's acts consistently and unreasonably deny the child opportunities to meet

their needs for interacting/communicating with adults inside or outside the home. An example related to Parental Alienation is placing unreasonable limitations or restrictions on social interaction with other family members.

## Consequences of Parental Alienation

Research has identified increased clinical emotional and behavioral problems in alienated children as well as risks to a child's psychological and emotional development. Alienated children may display anger, withdrawal, aggression, defiance, rigidity, and school refusal at a level that is higher than those children who maintain a relationship with both parents. Depression, somatic complaints, and sleep disturbance have also been identified. Children may exhibit symptoms of anxiety or panic reactions when asked to spend time with a rejected parent and there may be a fear of leaving the alienating or favored parent or concerns for the future and safety of this parent. Severely alienated children may act out being rude, swearing, attacking a parent, destroying property, or stealing. Conduct disorder or oppositional defiance may be evident (Baker, 2005; Baker & Darnall, 2007; Clawar & Rivlin, 2013; Dunne & Hedrick, 1994; Fidler & Bala, 2010; Gardner, 1985; Johnston, 2003, 2005; Johnston, & Campbell, 1988; Kopetski, 1998; Wallerstein & Kelly, 1980a).

In addition, research has identified that children who experience alienation are more likely to have an impaired ability to sustain effective, healthy relationships throughout their life-course, including work and social relationships, as well as an increased prevalence of mental health and psychiatric disorders and substance misuse (Baker, 2005a; Baker & Verrocchio, 2013; Bernet, 2010; Cartwright, 1993; Johnston, 2005; Johnston, Walters & Olesen, 2005).

Parental Alienation has been conceptualized as existing on a continuum from mild to severe, with therapeutic and legal interventions in response reflecting the severity and complexity (Burrill, 2006; Fidler, Bala & Saini, 2012; Rand, 1997; Rand & Kopetski, 2005).

Alienation is often exacerbated in cases involving third parties, such as social care, therapists, support

*Alienation is often exacerbated in cases involving third parties, such as social care, therapists, support agencies and the legal system.*

agencies and the legal system. Lack of knowledge and understanding by these practitioners can lead to inadvertent collusion with the alienation process, particularly where information and history is garnered from one parent's perspective only (Garber, 2007; Johnston & Kelly, 2001; Kopetski, 1998).

Ultimately, the solution to this problem is education of all parties involved. Those who receive reports of child maltreatment and investigate those allegations need to be educated about Parental Alienation. Without specialized

training child protection investigators will frequently make inadequate recommendations. Courts who hear motions and pleadings and, in the end, order litigants to participate in resolutions of some kind need to be educated as well. Mental health professionals who are often the recipients of these cases need to be trained to accurately assess the dynamics of the particular case. So, in the end, is Parental Alienation child abuse and as such is it reportable? The evidence seems clear but we're a long way from doing the right thing.

## Dr. Bob Evans

Robert A. Evans, Ph.D. is a licensed school psychologist in Clearwater FL. His practice is exclusively Forensic Psychology focusing on child custody and parental alienation in family law cases. He can be reached at [drevans@drbobevans.com](mailto:drevans@drbobevans.com)



The opinions in this article are that of the authors and do not represent the opinions of AFCC-NY.

## References

- Afifi, T, Sareen, J., Fortier, J., Taillieu, T., Turner, S., Cheung, K., and Henriksen, CA. (2017). "Child Maltreatment and Eating Disorders Among Men and Women in Adulthood: Results from a Nationally Representative United States Sample." *Journal of Eating Disorders*, Nov. 50(11), pgs. 1281-1296.
- American Professional Society on the Abuse of Children (2018). *The APSAC Handbook on Child Maltreatment: Fourth Edition*. Los Angeles, CA: Sage.
- American Psychiatric Association. (2015). *Diagnostic and Statistical Manual of Mental Disorders DSM-5(5th ed.)*. Washington, DC.
- Baker, Amy, J. L., Darnell, Douglas C. (2007). "A construct study of the eight symptoms of severe parental alienation syndrome: A survey of parental experiences." *Journal of Divorce & Remarriage* 47(1-2), 55-75.
- Baker, A. J. L. (2009). Adult recall of childhood psychological abuse: Definitional strategies and challenges. *Children and Youth Services Review*, 31(7), 703-714.
- Baker, A. & Fine, P. R. (2013). "Educating Divorcing Parents: Taking Them Beyond the High Road." In *Working with Alienated Children and Families: A Clinical Guidebook*, edited by Amy J. L. Baker and S. Richard Sauber. New York: Routledge.
- Baker, A. (2007). *Adult Children of Parental Alienation Syndrome: Breaking the Ties that Bind*. New York: W.W. Norton & Company.
- Baker, A. J. L. (2005). "The Long-Term Effects of Parental Alienation on Adult Children: A Qualitative Research Study." *American Journal of Family Therapy*, 33, 289-302.
- Bernet, W.: *Parental Alienation, DSM-V and ICD-11*. Springfield, IL: Charles C Thomas Publisher, Ltd., 2010
- Cartwright, G. (1993). "Expanding the Parameters of Parental Alienation Syndrome." *The American Journal of Family Therapy*, 21(3), 205-215.
- Ceci, S.J., & Bruck, M. (1995). *Jeopardy, in the Courtroom*. Washington, D.C., American Psychological Association.
- Centers for Disease Control and Prevention (CDC). (2015). *Child Maltreatment Definitions*. Accessed from <http://www.cdc.gov/ViolencePrevention/childmaltreatment/definitions.html>.
- Child Abuse Prevention and Treatment Act, 42 U.S.C. 5101.
- Clawar, S. S., & Rivlin, B. (2013). *Children Held Hostage: Identifying Brainwashed Children, Presenting a Case, and Crafting Solutions*. Chicago, Illinois: The American Bar Association.
- Dunne, J., & Hedrick, M. (1994). "The Parental Alienation Syndrome: An Analysis of Sixteen Selected Cases." *Journal of Divorce & Remarriage*, 21, 21-38.
- Fidler, B. J., & Bala, N. (2010). "Children Resisting Post Separation Contact with a Parent: Concepts, Controversies, and Conundrums." *Family Court Review*, 48(1), 10-47.
- Fidler, B. J., Bala, N., & Saini, M. A. (2013). "Children Who Resist Post Separation Parental Contact." *American Psychology Law Society Series*: New York: Oxford.
- Garber, B., (2007). "Conceptualizing Visitation Resistance and Refusal in the Context of Parental Conflict, Separation, and Divorce." *Family Court Review*, 45(4), 588-599.
- Gardner, R. A. : *The Parental Alienation Syndrome* (2nd ed.). Cresskill, NJ: Creative Therapeutics, 1992.
- Johnston, J. R. (2003). "Parental Alignments and Rejection: An Empirical Study of Alienation in Children of Divorce." *Journal of the American Academy of Psychiatry and the Law*. 31 (2), 158-170.
- Johnston, J. R., & Campbell, L. E. (1988). *Impasses of Divorce: The Dynamics and Resolution of Family Conflict*. New York, NY: Simon & Schuster.
- Johnston JR, & Kelly JB: (2001). "The Alienated Child: a Reformulation of Parental Alienation Syndrome." *Family Court Review* 39:249-66.
- Johnston, J. R., Walters, M. G., & Olesen, N. W. (2005). "Is it Alienating Parent, Role Reversal or Child Abuse? A Study of Children's Rejection of a Parent in Child Custody Disputes." *Journal of Emotional Abuse*, 5(4), 191-218.
- Kopetski, L. (1998). "Identifying Cases of Parental Alienation Syndrome: Part II." *Colorado Lawyer*, 29, 63-66.
- Rand, D., Rand, R., & Kopetski, L. (2005). "The Spectrum of Parental Alienation Syndrome (part III): The Kopetski Follow-Up Study." *American Journal of Forensic Psychology*, 23(1), 1543.
- Rand, D. C. (1997). "The Spectrum of Parental Alienation Syndrome (part II)." *American Journal of Forensic Psychology*, 15, 39-92.
- Spinazzola, J., Ford, J. D., Briggs, E. C., Liang, L.-J., Layne, C. M., Pynoos, R., Stolbach, B. (2014). *Psychological Trauma: Theory, Research, Practice and Policy*, Vol. 6, No.51, 518-528.
- Vajda, A. & Lang, A., (2014). "Emotional Abuse, Neglect in Eating Disorders and Their Relationship with Emotional Regulation." *Procedia - Social and Behavioral Sciences*, 131, 386-390.
- Wallerstein, J. S., & Kelly, J. B. (1980). *Surviving the breakup: How children and parents cope with divorce*. New York: Basic Books.



# The Withholding of a Religious Divorce (Get) as a Form of Domestic Abuse: Is there a Remedy?



by Martin E. Friedlander, Esq. & David Pelcovitz, Ph.D.

In the US, approximately 10% of the Jewish population defines itself as Jewish Orthodox. In such traditional Jewish households, a couple who chooses to divorce will do so with a Jewish decree of divorce, referred to as a Get. Among practicing Orthodox Jews, the Jewish Get is required in addition to the civil decree of a divorce. The husband must give his wife the Get, the Jewish divorce document, and the wife must accept it, in front of witnesses. In the United States, as well as other countries where Orthodox Jews reside, if an observant Jew obtains a civil divorce judgment, that person still may not have a religious marriage until a Get is given and received. This applies to all practicing Orthodox Jews.

Those who have dealt with matrimonial matters with Jewish clients, have likely been confronted with the issue of the Get, or the Orthodox Jewish Divorce. Acquiring the Get, in many cases, can take on a life of its own. This is especially likely if the parties are observant and follow specific laws and traditions regarding the method that the Get must be given. Martin Friedlander has been involved in an organization, called Yashar. Its purpose is to assist divorcing couples and create a fair environment where the parties can resolve their marital issues on a level playing field. A prenuptial agreement is utilized to anticipate some of the issues that may arise in the future.

As part of the work, the Yashar organization conducted a study overseen by Dr. David Pelcovitz and approved by the Institutional Review Board of the Einstein School of Medicine. The study was conducted by examining 126 spouses, children, and adult children who were asked to answer a prepared survey on the impact on the family when one party withholds a Get.

In the study, the age of the women ranged from 22 to 65, with the average age being 45 and 46. Ninety-eight percent the women had children, from one child to five children or more. The children's ages ranged from 10 months to 38 years. Only 9 children were under 3. Among this group, only 74% received a Get and 82% already had a civil divorce.

Psychometrically reliable and valid psychological measures were used to systematically measure the impact of the Get refusal on women and their children. These measures included the following:

**The Conflict Tactics Scale Revised (CTS2) – Physical Assault Subscale** – a measure that assesses the presence of physical violence in marital relationships and has demonstrated high levels of reliability and validity.

**The Yllo's Controlling Behavior Questions (Yllo, 1990)** – A scale that measures emotional abuse in the marital relationship. Because this measure has not been extensively researched, it was used in an exploratory manner, serving more as a qualitative than a quantitative measure of controlling behavior.

**PCL-C**, a shortened version of the PTSD checklist which assesses PTSD in parents.

**The Duke Health Profile** – a general measure of emotional, social and health functioning in parents.

In addition to parental measures, there were measures completed by children to assess emotional and behavioral problems in children and adolescents, which included the following:

**Strengths and Difficulties Questionnaire (SDQ)** This is self-report questionnaire comprised of 25 questions that assess emotional and behavioral problems in children ages 11-17.

**Children's Perception of Interparental Conflict Scale (CPIC)** – A measure that assess a child's understanding of his or her experience of parental conflict.

Based on the administration of these scales, the findings detailed below illustrate the emotional, behavioral, and social cost the Get refusal had on the women and children we studied.

**PTSD CORE FINDING:** A surprisingly high percentage of the agunot in the study had post-traumatic symptoms similar to those seen in survivors of combat or severe domestic violence. Women in this sample who had not received their Get had higher PTSD scores on the PCL-C scale than women who had received their get.

A t-test was conducted to examine whether there were differences in PTSD depending on whether or not the women had received a get.

Another t-test was conducted to look at differences on the Duke health profile scores, depending on whether the woman has received a get or not. The subscales from the Duke that were examined were: total health, total dysfunction, physical health, mental health, social health, anxiety, depression, general health, perceived health, pain, self-esteem and disability. There were differences in the total dysfunction score, as those who received a get had less dysfunction ( $M=64.62, SD=14.70$ ) than those who had not received a Get ( $M=57.76, SD=16.63$ )\* (The higher the score the less dysfunction).

**2. Suicidality and other Psychological Difficulties:**

**CORE FINDING: High levels of thoughts of suicide and difficulty managing anger**

- There was an alarmingly high endorsement by the Agunot women (i.e., women who can't remarry within the faith because they are not granted a Jewish divorce by their husband) of serious psychological issues, which they reported as subjectively being the result of being trapped in an unwanted marriage: Most alarming was our finding that **81% of the women reported thoughts of suicide or self-harm.**

**3 Physical Violence in the Marriages of the Agunot:**

**CORE FINDING: A high rate of physical violence in the marriages of the agunot.**

The experience of physical violence was examined in women who had been, or currently are, Agunot, as measured by the Conflicts Tactics Scale. Only 32% of women report that their ex-husband never physically abused them in any way. Nearly half (47%) of women reported that their ex-husbands physically abused them in multiple ways.

The Agunot themselves also reported some physical violence toward their ex-husbands. Twenty-eight percent reported physically abusing their husband in some manner and 6% reported abusing their ex-husband in at least three different ways. Table 3 below shows the percent who agreed to each of the statements, both about themselves and their ex-husbands.

Table 3. Percent of respondents who agree to each of the statements about themselves and their ex-husband

Statement	% Agunot	% Ex-husband
Kicked, bit or punched	5.4%	33.6%
Slapped	13.5%	30.8%
Beaten up	2.7%	20.4%
Hit with something	6.4%	30.5%
Chocked	0%	18.1%
Slammed against a wall	0%	30.2%
Grabbed	10.3%	47.2%
Thrown something that could hurt	3.7%	29.0%
Used a knife or gun	.9%	8.3%
Pushed or shoved	11.8%	52.3%
Twisted arm or hair	.9%	28.7%
Burned or scaled on purpose	0%	.9%

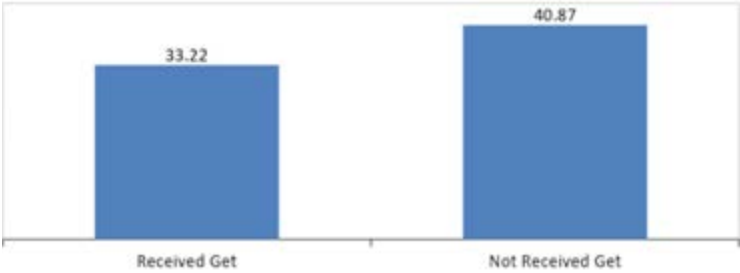


Figure 1. Differences in PTSD scores depending on whether the woman has or has not received her get.

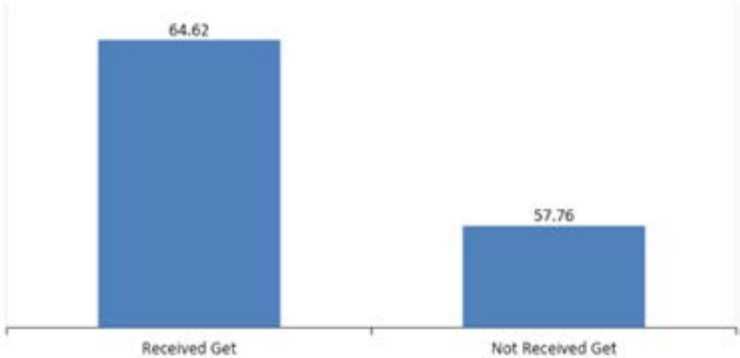


Figure 2. Differences in the dysfunction score between women who have and have not received their get.

#### **4. Emotional and Sexual Abuse:**

**CORE FINDING: 62% of the women report being made to do sexual acts against their will. The majority of the women report feeling controlled, intimidated and frightened by their ex-husbands.**

Table 4 below shows the percent of each of problematic behaviors that were reported as being present.

Statement	Affirmative (Yes) Responses
You felt you were treated like a subordinate, like a servant by your ex-husband; making you wait on him or making important decisions alone	81.1%
You felt intimidated and frightened (e.g. by your ex-husband's shouting looks, smashing things)	78.0%
You felt isolated by your ex-husband controlling who you could see or call or where you could go	69.8%
You felt you were made to do sexual things against your will	62.0%

We statistically assessed the data to determine whether there was a relationship between the amount of physical abuse and controlling behavior exerted by the ex-husband and we also sought to determine how frequently the children were exposed to conflict relating to the divorce.

There was a significant relationship between the amount of physical abuse reported from the ex-husband and the degree to which his behavior was controlling. There was also a significant relationship between the frequency at which their children were exposed to conflict relating to the divorce and the amount of physical abuse from the ex-husband,

The more controlling the behavior of the husband and the more frequently the children were exposed to conflict relating to divorce, the higher levels of physical abuse reported.

- 69.8% describe husbands who isolated them by controlling who they could see or where they could go. 78% felt intimidated by their ex-husband's shouting
- Marital sexual coercion is associated with high levels of psychological distress and impairment. The finding that 62% of the women report being forced to engage in sexual activity against their will is of particular concern given the robust research literature on how the process of marital rape increases risk for depression, suicidality and significant impairment in functioning.

#### **Conclusions:**

These findings clearly document the severity of the emotional, psychological and social toll suffered by women trapped in an unwanted marriage. The high level of physical and sexual violence coupled with the prevalence of emotional abuse highlights the importance of understanding the devastating toll of being an Aguna.

#### **Children of Agunot**

To our knowledge, this is the first study of children of agunot that used systematic, psychometrically reliable and valid measures. We found compelling evidence of the damage caused by living in such a psychologically difficult environment.

#### **Emotional and Behavioral Symptoms:**

**CORE FINDING: Over one-quarter of children have "very high" levels of emotional difficulties as defined by the psychometric properties of the measures described above; over one-quarter also have significant difficulties with peers.**



## Children

The percentages below indicate the emotional and behavioral symptoms (difficulties) present in children of agunot at above-average levels:

33% had higher than average emotional difficulty scores  
38% have higher than average emotional symptoms  
15% have higher than average conduct problems  
23% have higher than average hyperactivity scores  
27% have higher than average peer problems  
49% have higher than average impact scores

## Children Then, Adults Now

The percentages below indicate emotional and behavioral symptoms present in adults who were children of Agunot at above average levels:

32% had higher than average emotional difficulty scores  
37% have higher than average emotional symptoms  
10% have higher than average conduct problems  
29% have higher than average hyperactivity scores  
47% have higher than average peer problems  
13% have higher than average prosocial scores  
47% have higher than average impact scores.

## Children Then, Adults, Now:

**CORE FINDING: Almost one-half of adult children of agunot report higher than average social problems; 37% have higher than average emotional symptoms.**

The lingering impact of growing up in a home where a mother was trapped in an unwanted marriage was very clear. The adult children of agunot reported the following symptoms .

- Social difficulties (47%), and higher-than-average difficulty managing emotional distress (37%). These symptoms were typically reported years after their mothers were given a Get.

The overall implications of our research on the impact of being forced to stay in an unwanted marriage highlights the importance of considering the devastating toll often suffered by the women and their children. It is our hope that judges, attorneys and mental health professionals take this into consideration in weighing the need for appropriate intervention to help this vulnerable

## References

1: Aguna in Hebrew means “chained”. Under Jewish law, a man must give a religious divorce willingly and the wife must accept the same willingly. If a husband refuses to provide a Get (Orthodox Jewish divorce), then the wife remains “chained” to the marriage and cannot remarry religiously.

The opinions in this article are that of the authors and do not represent the opinions of AFCC-NY.

population avoid a level of emotional suffering that can linger for generations. Sensitizing the general population to this toll can lead to a number of benefits, including heightened awareness, community advocacy and outreach.

## From the Legal Perspective

A colleague of Martin Friedlander who practices law in Australia indicated that Australia passed a law which allows that withholding a Get is a basis alone for the continuation of the order of protection after the order was already been made. Perhaps a similar law should be implemented in the US, that is, that the withholding of a Jewish religious divorce should be considered a form of abuse and coercive control which warrants the granting or extension of an order of protection.

In this case, when a spouse, namely the husband, is exercising dominion and control over the wife by refusing to give the Get due to the parties’ religious beliefs and practices, the husband is effectively exercising a form of coercive control as the wife cannot remarry pursuant to her religious beliefs. Thus, consideration should be given to possibly amending the current statute which details the grounds for obtaining and continuing orders of protection, so that I may include not giving or accepting a religious divorce, as it could be considered consistent with a pattern of exercising coercive control.

The fact that both parties at the time of the marriage subscribed to religious tenants, would indicate that the said refusal of giving a Get would constitute undue control by one party. Just as one entered into a marriage under religious principals with a religious ceremony, they must dissolve it the same way. This should not be considered to violate any constitutional laws.

**Martin E. Friedlander, Esq.** is an experienced family attorney with over twenty-five years of experience. He is the principal of Martin Friedlander, PC., a boutique law firm in New York City, which specializes in all aspects of family and matrimonial law and handling complex custody hearings. He can be contacted at (212) 321-7092 or email [mef@mflawyer.com](mailto:mef@mflawyer.com).



**David Pelcovitz, Ph.D.**  
**Straus Chair in Psychology  
and Education**  
Azrieli Graduate School  
Yeshiva University NY NY



## Executive Board

**Sherill Sigalow, Ph.D.**

CO-PRESIDENT

**Karen Rosenthal, Esq.**

CO-PRESIDENT

**Lawrence Braunstein, Esq.**

PAST CO-PRESIDENT

**Robin Carton, Esq.**

PAST CO-PRESIDENT

**Teresa Ombres, Esq.**

PRESIDENT ELECT

**Hon. Llinet Rosado**

VICE PRESIDENT

**Karen Simmons, Esq.**

SECRETARY

**Tomoko Kataoka, Esq.**

TREASURER

**Harriet Weinberger, Esq.**

PARLIAMENTARIAN



## Board-At-Large

**Jenifer Foley, Esq.**

**Sylvia Goldschmidt, Esq.**

**Seymour Moscovitz, Ph.D.**

**Ken Neumann, Ph.D.**

**Daniel O'Leary, Ph.D.**

**Hon. Jane Pearl**

**Rodrigo Pizarro, MD**

**Hon. Andrea Phoenix**

**Eric Wrubel, Esq.**

**Leah Younger, Ph.D.**

**Alberto Avi Yohananoff, Ph.D.**

## Emeritus

**Steven Demby, Ph.D.**

**Prof. Andrew Schepard**

**Hon. Jacqueline Silberman**



Editor-in-Chief

### Alberto Yohananoff, Ph.D.

NYC Forensics LLC. 19 West 34th St., PH, NYC 10001

Tel: (646) 284-5600 • Fax: (212) 706-9136

Email: nycforensics@gmail.com

**Alberto (Avi) Yohananoff** specializes in forensic assessments in a variety of litigation categories including civil/family law (child custody, child protective proceedings, termination of parental rights, juvenile delinquency), Hague convention matters, and criminal matters (sentence mitigation, competency matters). Dr. Yohananoff's primary emphasis is in child custody matters. Dr. Yohananoff also teaches and lectures on topical issues in forensic psychology.

Speaking engagements have included repeated presentations at the New York County Lawyers' Association, and at the AFCC, most recently in Toronto, Canada. Dr. Yohananoff has been an invited guest speaker at the Summer Judicial Institute in 2018. Dr. Yohananoff teaches forensic psychology to graduate students at the City College of New York. He was published in the Journal of Forensic Practice (2015) and most recently he co-authored an article entitled "Best Interest, Parents Contractual Rights and Raising of Children under a Defined Religion" in the New York Law Journal (January 11, 2018).

In addition to performing child custody evaluations Dr. Yohananoff has reviewed forensic reports of professional peers and has assisted attorneys in the preparation of cross-examination of expert witnesses. Dr. Yohananoff has provided expert testimony in Federal, Family and Supreme Court in the New York metropolitan area as well as in Nassau and Westchester counties. He has been affiliated with the Faculty of New York Presbyterian Hospital/Weill Medical College of Cornell University, and serves on the voluntary faculty of North Shore University Hospital.



Co-Editor

### K. Daniel O'Leary, Ph.D.

Distinguished Professor

Stony Brook University

Stony Brook, NY

**K. Daniel O'Leary, Ph.D.** is Distinguished Professor of Psychology at Stony Brook University. He was chairman of Psychology Department, Director of Clinical Training at Stony Brook University. He was President of the Association of Behavior and Cognitive Therapy and of the Association of Family and Conciliation Courts. He has conducted forensic custody evaluations for numerous judges in Supreme and Family Courts of Suffolk County, NY for twenty-eight years, and he is a divorce/family dispute mediator with attorney, Dawn Murphy, in Smithtown, NY. His recent research focuses on the impact of alcohol abuse, anger, and personality disorders on intimate partner violence and multivariate risk models of intimate partner violence in national samples in the United States and Ukraine. He has published over 300 articles or chapters and 13 books. His awards include: Distinguished Scientist Award, Clinical Division, APA; Lifetime Achievement Award from National Family Violence Legislative Resource Center, 2009; Family Psychologist of the Year in 2011, APA; Psychologist of the Year, Suffolk County, NY, 2015; the Elizabeth Beckman Award, \$25,000, for mentoring graduate students in 2015, and Fellow of the American Association for the Advancement of Science, February, 2019.