

MINIMIZING BIAS AND PREMATURE CLOSURE: A RUBRIC FOR THE EVALUATION AND ADJUDICATION OF RESIST/REFUSE DYNAMICS

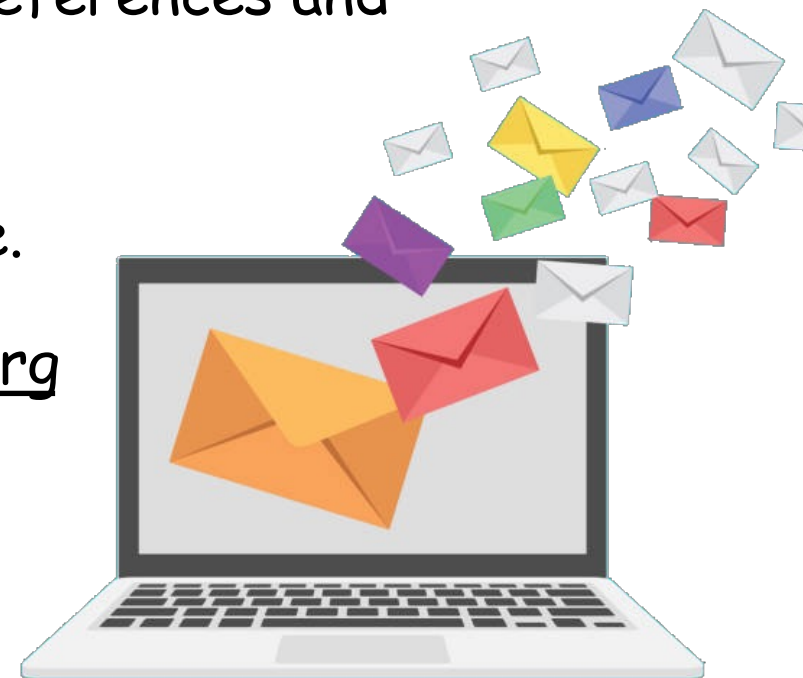


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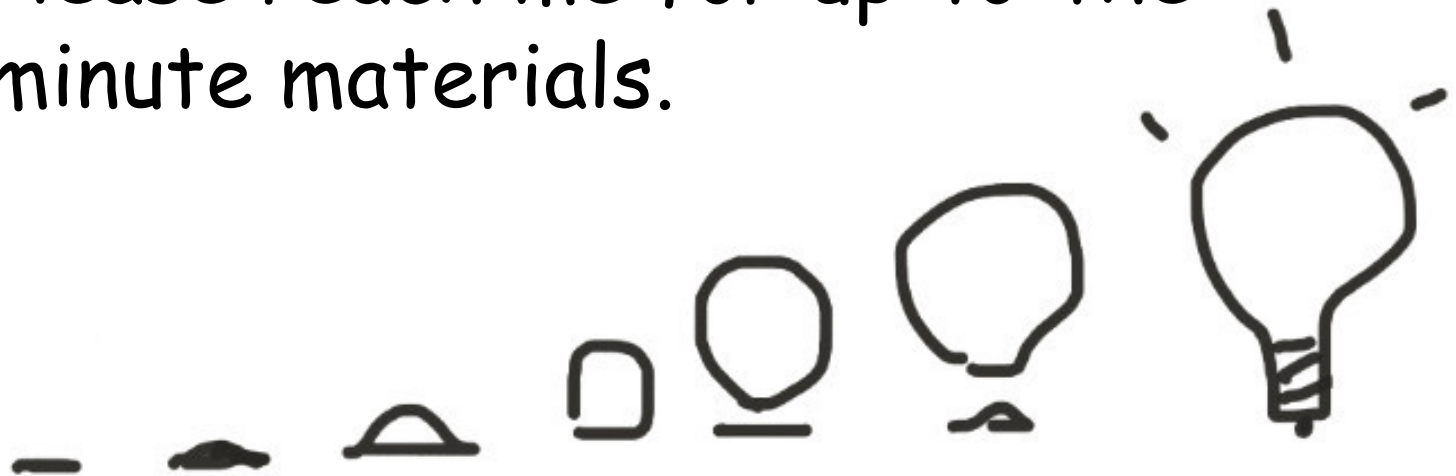
Caveat lector

- ❖ Time is short. The topics presented here today each deserve in-depth examination. Take this presentation as introduction only. Please use the references and links provided to learn more.
- ❖ Make this the beginning of a dialogue. Contact me any time at:
bdgarberphd@FamilyLawConsulting.org



Caveat lector

- ❖ These ideas are always evolving, so this presentation must as well. Please reach me for up-to-the-minute materials.



Caveat lector

- ❖ Gender references and images are arbitrary for the ease of expression unless specifically noted
- ❖ **"Parent"** refers to any primary caregiver without regard to biological or genetic status, legal ties or cohabitation status unless specifically noted.



Caveat lector

- ❖ The dynamics at issue can occur within any caregiver-child dyad regardless of legal, biological, or genetic relatedness or proximity; i.e.,
- ❖ This is not only about divorce.



Caveat lector

- ❖ We don't know if or how this conceptualization may be culture-specific.



Caveat lector

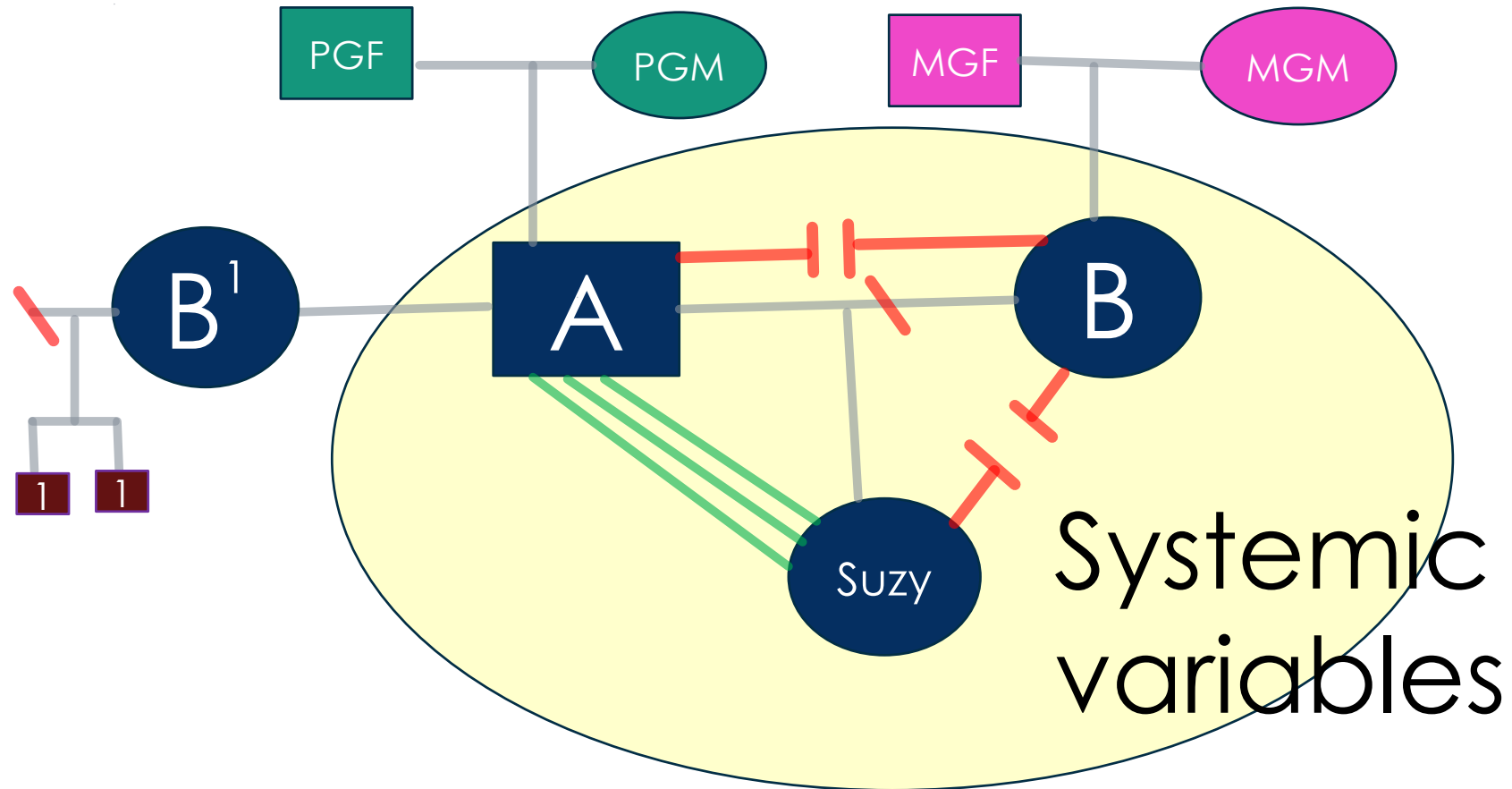
- ❖ These topics are controversial and can be inflammatory.
- ❖ My goal is to push this discussion ahead toward a valid model and efficient/effective practices that genuinely serve the BIC.

At issue

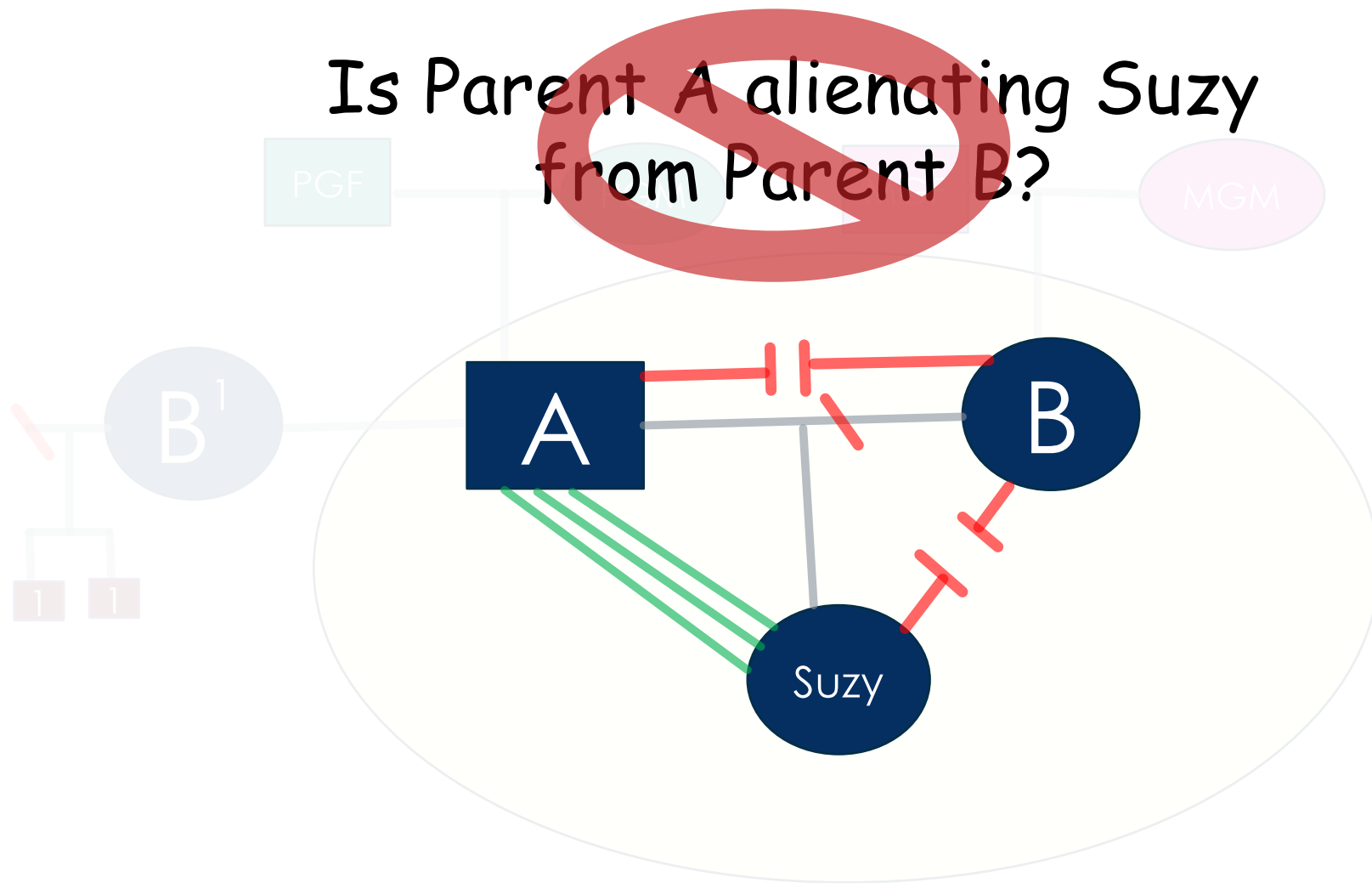
The polarized child



Extra-systemic variables



Is Parent A alienating Suzy from Parent B?



Language biases perception





Is Parent A alienating Suzy
from Parent B?

Asking the question this way

- ❖ Reflects the history of our field
- ❖ Biases the evaluation (ketchup blindness)
- ❖ Promotes **binary** good guy/bad guy perspective
- ❖ Fuels acrimony
- ❖ Risks premature closure/myopic approach

Why is Suzy allied with Parent A and resisting/refusing contact with Parent B??

Asking the question this way

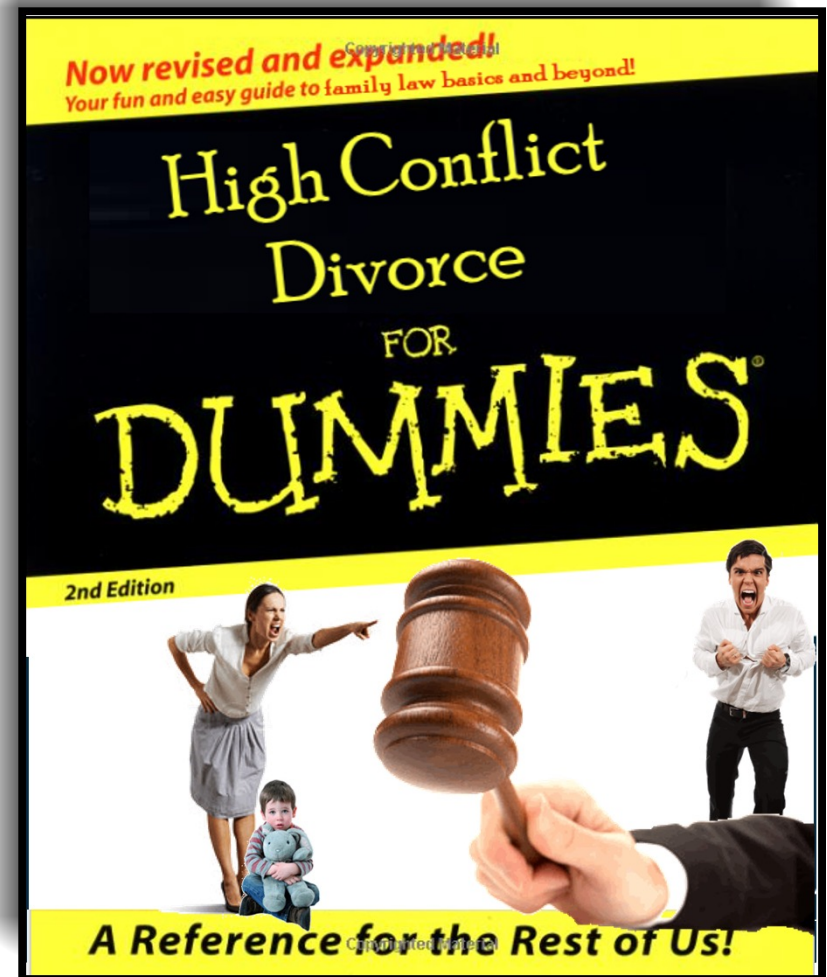
- ❖ Minimizes evaluation bias
- ❖ Minimizes premature closure
- ❖ Invites a broad “ecological” investigation of all relevant variables

"Children are at greater risk when parent-child contact problems are not effectively addressed and when family law professionals and others echo and intensify the polarization within the family. This problem may be exacerbated by ... gendered and politicized assumptions that either parental alienation or intimate partner violence is the determinative issue"

15 August, 2022 by the Association of Family and Conciliation Courts (AFCC) and the National Council of Juvenile and Family Court Judges

Unfortunately, some approaches to PCCP endorse a binary alienation v. estrangement approach.

Simple, recipe-like approaches are very appealing



SCIENCE VS.
EVERYTHING
ELSE

ANSWERS

SIMPLE
BUT WRONG

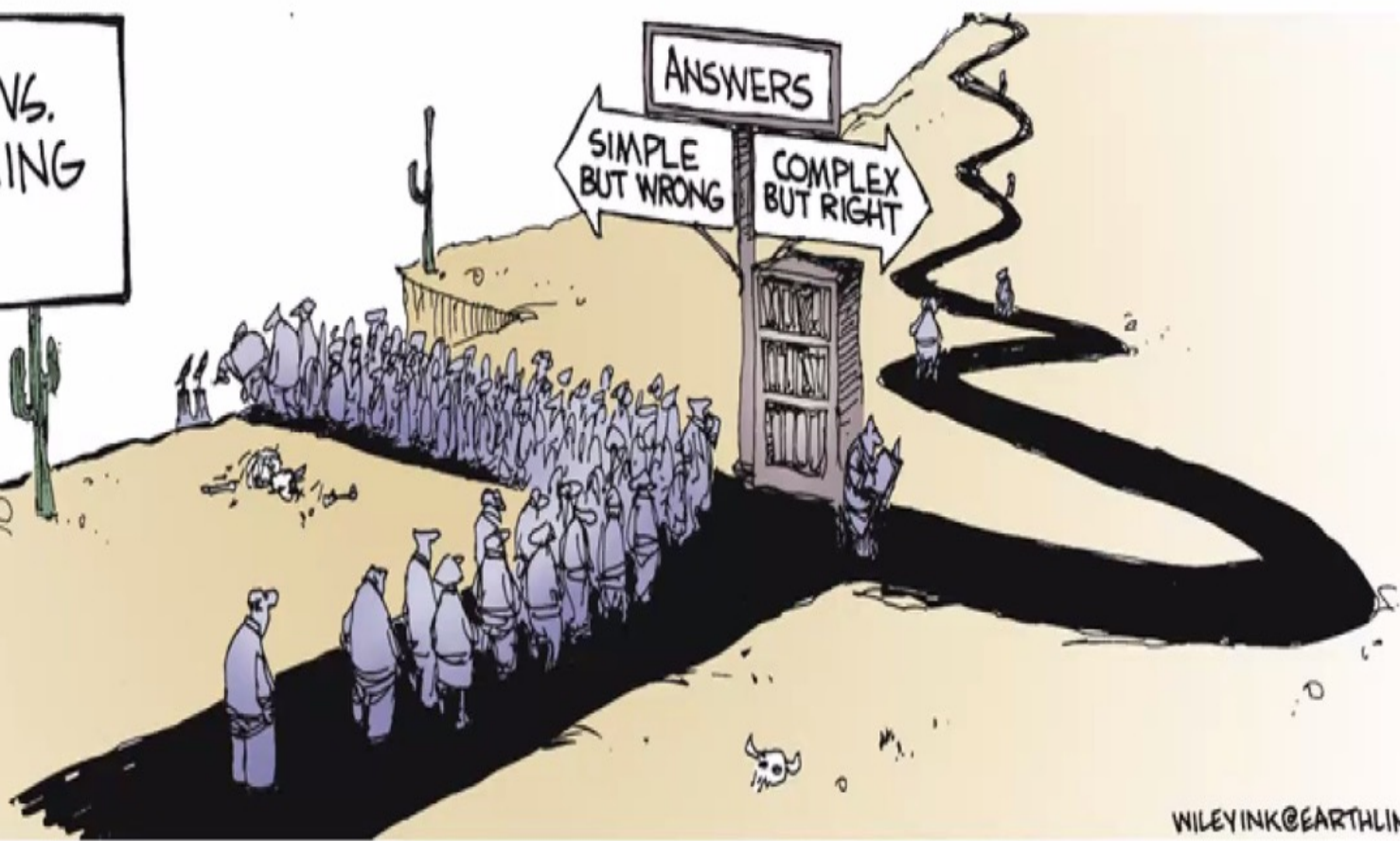
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The Five Factor Model



Joshi, A. (2021). Litigating Parental Alienation. American Bar Association: Washington D.C

Bernet, W. (2020). The Five-Factor Model for the Diagnosis of Parental Alienation. Feedback 6 (Summer): 3-15.

Bernet, W., & Greenhill, L. L. (2022). The Five-Factor Model for the diagnosis of parental alienation. Journal of the American Academy of Child & Adolescent Psychiatry, 61(5), 591-594.

The Five Factor Model

IF...

1. The Child Manifests Contact Resistance or Refusal, i.e., Avoids a Relationship with one of the Parents, AND
2. The Presence of a Prior Positive Relationship Between the Child and the Rejected Parent, AND
3. The Absence of Abuse, Neglect, or Seriously Deficient Parenting on the Part of the Rejected Parent, AND
4. The Use of Multiple Alienating Behaviors on the Part of the Favored Parent, AND
5. The Child Exhibits Many of the Eight Behavioral Manifestations of Alienation.

Bernet and Greenhill (2022)

... THEN alienation

1. The Child Manifests Contact Resistance or Refusal, i.e., Avoids a Relationship with one of the Parents



"This might involve complete contact refusal, or it might involve agreeing to contact but resisting/refusing attempts on the part of the parent for communication, affection, and interaction. In these situations, the child may be physically present but is not emotionally present."

Baker, A. J. L. (2020). Parental alienation and empirical research. In D. Lorandos & W. Bernet (Eds.), *Parental alienation: Science and law* (pp. 207-253). Charles C Thomas Publisher, Ltd.

2. The Presence of a Prior Positive Relationship Between the Child and the Rejected Parent



1. What is a "positive relationship"?

2. Don't conflate images (photos, movies) of happy times with relationship security

3. An impossible tautology:

If parent A alienated Suzy from Parent B her entire life,
Then Parent B could never have had a positive relationship with Suzy,
Which means that Parent A was not alienating!

3. The Absence of Abuse, Neglect, or Seriously Deficient Parenting on the Part of the Rejected Parent



1. Define "Abuse" and "Neglect"? Jurisdictions vary.
2. There is no objective measure of what is and is not scary (e.g., children with prior trauma)
3. 5FM ignores vicarious trauma (e.g., child witness IPV)
4. Half-life of child abuse? When does protective gatekeeping become alienation?
5. CPS has HUGE error rates (false positives and false negatives)

"... the median estimated false positive and false negative error rates were 0.18 and 0.36, respectively"

Herman, S., & Freitas, T. R. (2010). Error rates in forensic child sexual abuse evaluations. *Psychological Injury and Law*, 3(2), 133-147.

See also: Hershkowitz, I., Fisher, S., Lamb, M. E., & Horowitz, D. (2007). Improving credibility assessment in child sexual abuse allegations: The role of the NICHD investigative interview protocol. *Child Abuse & Neglect*, 31, 99-110.

4. The Use of Multiple Alienating Behaviors on the Part of the Favored Parent



Factor 4: Seventeen adult strategies of alienation

1. Bad mouthing
2. Limiting contact
3. Interfering with communication
4. Interfering with symbolic communication
5. [Contingent] withdrawal of love
6. Telling the child that the parent is dangerous
7. Forcing the child to chose
8. Telling the child that the parent does not love him/her/them
9. Confiding in the child
10. Forcing the child to reject the parent
11. Asking the child to keep secrets from the parent
12. Confiding in the child
13. Referring to the parent by his/her/their first name
14. Referring to step-parent as "Mom" or "Dad"
15. Withholding medical, academic, and other important data from the parent
16. Changing the child's name to remove association with the parent
17. Cultivating dependency/undermining the parent's authority

Baker, Amy J. L. and Darnall, Douglas(2006). Behaviors and Strategies Employed in Parental Alienation. *Journal of Divorce & Remarriage*,45:1,97-124

5. The Child Exhibits Many of the Eight Behavioral Manifestations of Alienation.



Factor 5: Eight manifestations of alienation in children

1. Campaign of denigration
2. Weak, frivolous or absurd rationalizations for the denigration or deprecation
3. Lack of ambivalence
4. The independent thinker phenomenon
5. Cruelty toward the alienated parent with no remorse or guilt
6. Reflexive support of the alienated parent
7. Presence of borrowed scenarios
8. Spread of animosity to the friends and/or extended family of the alienated parent

Amy J. L. Baker and S. Richard Sauber, editors, *Working with Alienated Children and Families: A Clinical Guidebook* (New York: Routledge, 2013), 62.

1. Studies alleging to validate these variables are cross-sectional and retrospective, contaminated by participant self-selection and investigator bias.
2. We don't know if or how any of these variables proactively might contribute to resist/refuse "polarized" outcomes.

Retrospective study

Time

Aha! ALL PCCP cases
begin with
Behavior A

Behavior A

PCCP



Prospective (longitudinal) study

Behavior A is
SOMETIMES
associated with PCCP

Time



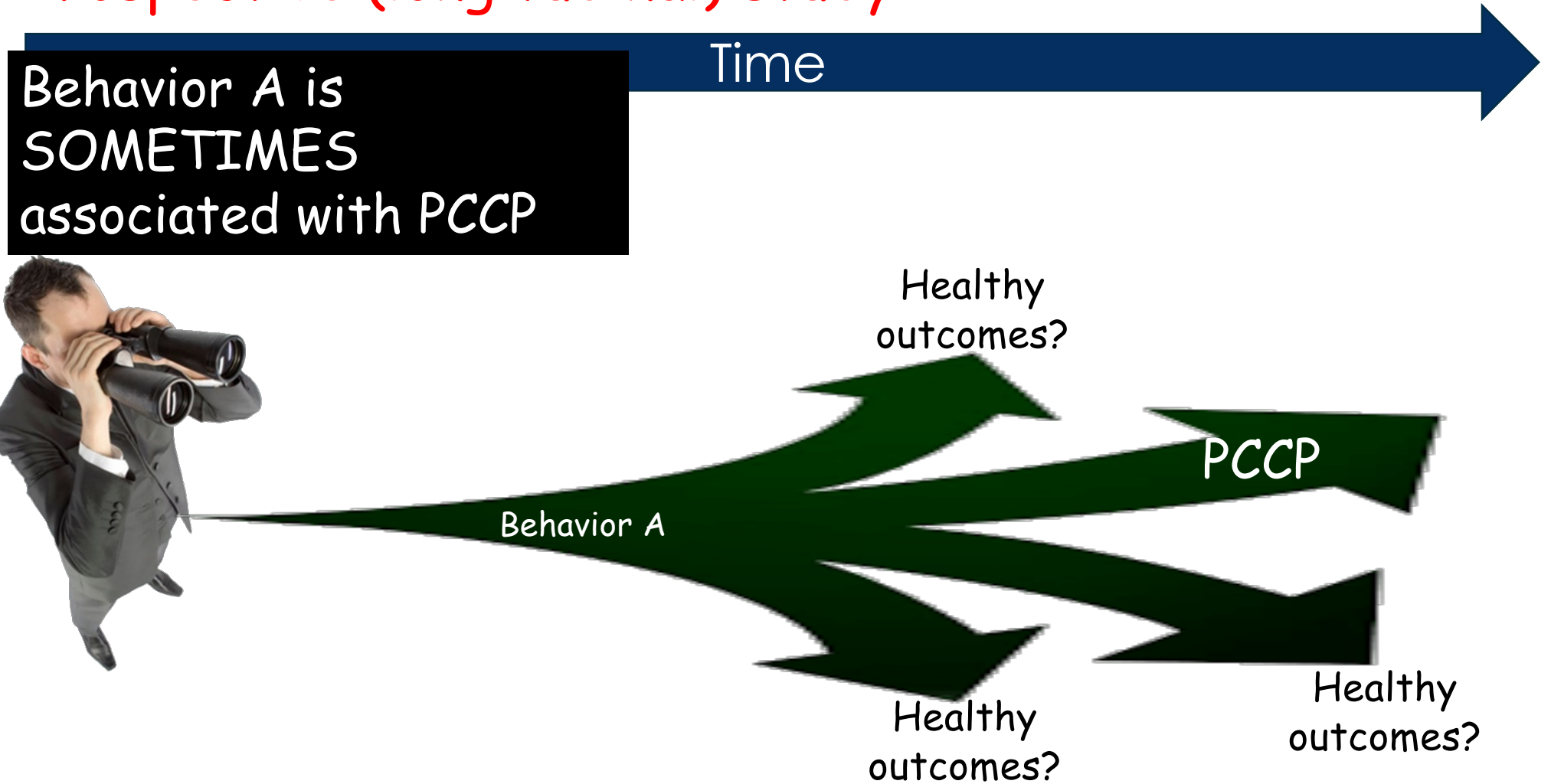
Behavior A

Healthy
outcomes?

PCCP

Healthy
outcomes?

Healthy
outcomes?



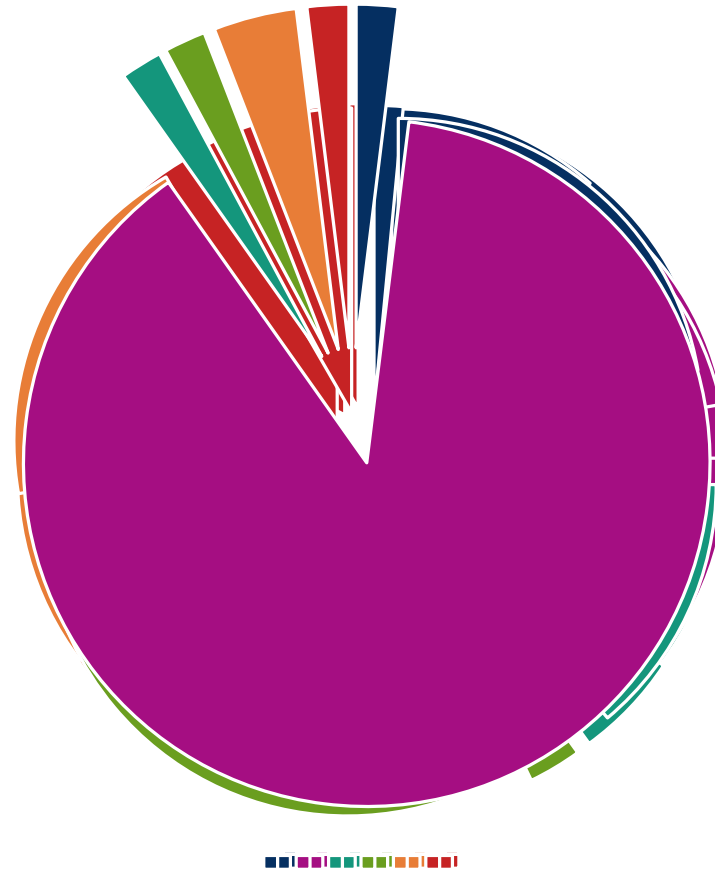
The most important criticism of the
5FM is that it is binary

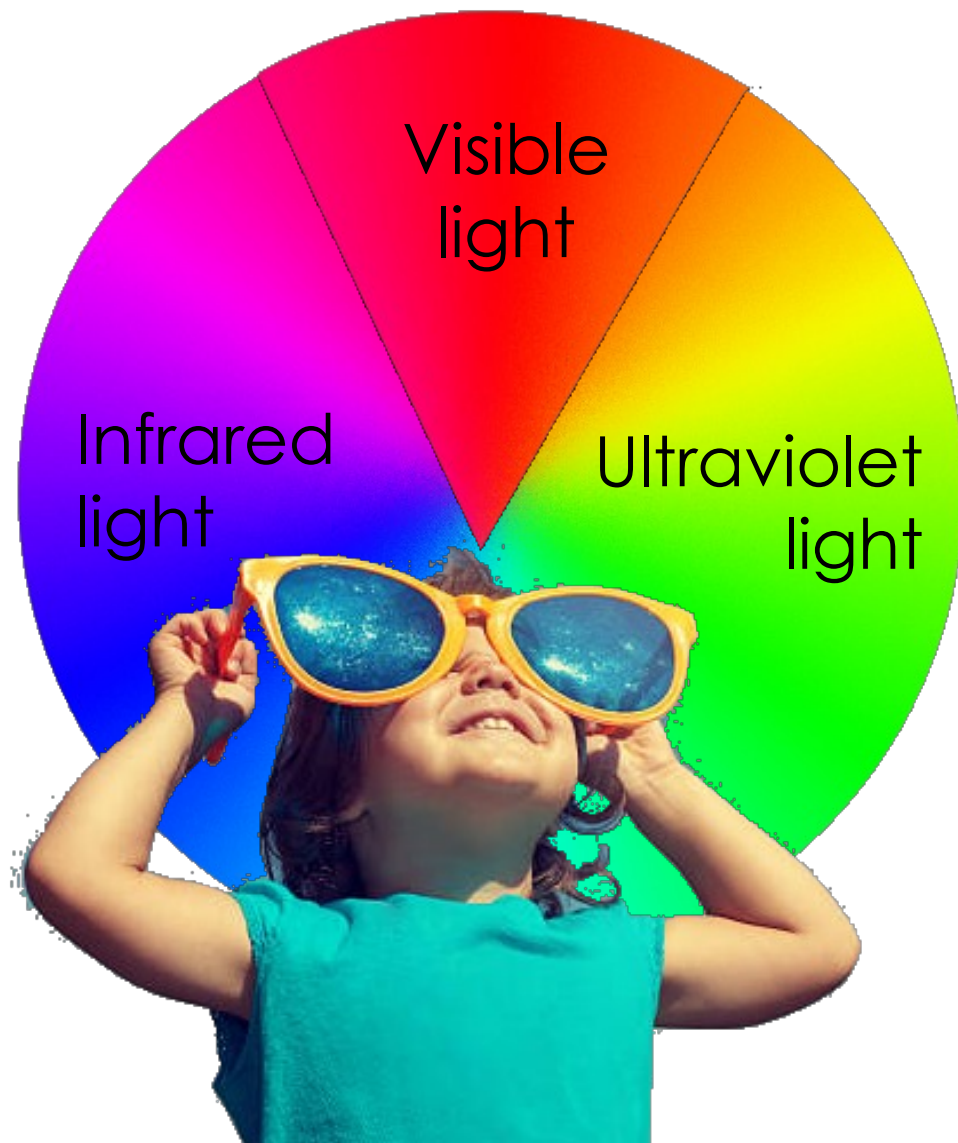


or



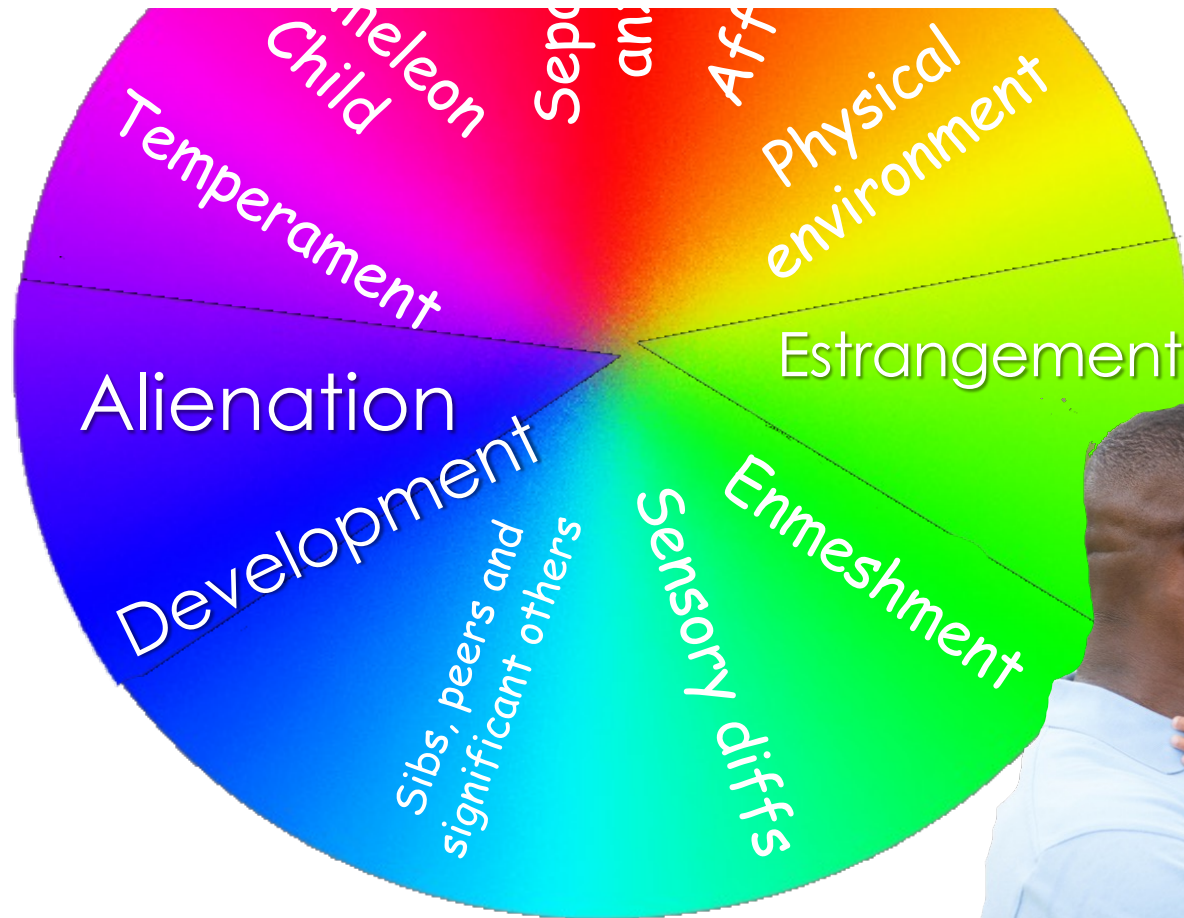
We know that
PCCP
is commonly
associated with
many convergent
variables







Which among many variables are associated with this family's unique conflict?



"... uncomplicated or pure cases of alienation in which neither estrangement nor enmeshment were identified as playing a significant role, **were relatively infrequent....**"

Friedlander, S., & Walters, M. (2010). When a child rejects a parent: Tailoring the intervention to fit the problem. *Family Court Review*, 48(1), 98-111.

RRD is associated with
"... a multi-factor explanation of
children's rejection of a parent with
both the aligned and rejected parents
contributing to the problem, together
with role reversal in parent-child
relationships"

Johnston, J. R., Walters, M. G., & Olesen, N. W. (2005). Is it alienating parenting, 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.

An ecological perspective examines the full spectrum of relationship pressures and practical variables that mutually contribute to a unique child's specific circumstance.

Garber, B.D. (2019). Sherlock Holmes and the case of resist/refuse dynamics: Confirmatory bias and abductive inference in family law. *Family Court Review*, 58 (2), 386-402.

SPECIAL ISSUE: PARENT-CHILD CONTACT PROBLEMS: CONCEPTS, CONTROVERSIES, & CONUNDRUMS
CASE EVALUATION AND RESPONSE

SHERLOCK HOLMES AND THE CASE OF RESIST/REFUSE DYNAMICS: CONFIRMATORY BIAS AND ABDUCTIVE INFERENCE IN CHILD CUSTODY EVALUATIONS

Benjamin D. Garber

Just as Arthur Conan Doyle's fictional detective, the great Sherlock Holmes, actually engaged in deductive reasoning, so would have actual many "true" cases. In fact, Holmes' logical progression from under observation to hypothesis is a model of a type of inductive reasoning. This paper argues that mental health professionals tasked to evaluate why a child is misbehaving/acting out with one parent need approach each family as two Sherlock Holmes approached each case, without a personal impact, viewing objectively from dead to hypothesis, well-versed in the full range of dynamics that may be at play, and acting in face of previous data that perhaps. By contrast, the custody evaluator who approaches these matters through a deductive process, seeking data that support as a *priori* theory, is vulnerable to confirmatory bias and doing harm to the child whose interests are paramount. The longer concerned with inductive dynamics is reviewed, including 1) non-intuitive evidence available that evaluators need consider as well as more fully identify why a particular child is exhibiting or refusing contact with one parent. On this basis, the typical model is expanded to include the full spectrum of confirming dynamics. Specific recommendations are made for judicial officers to the nature of varying roles for custody evaluators that enhance the risk of extraordinary bias.

Key Words for the Family Court Community:

- Deductive reasoning tends to confirm or reflect as a *priori* hypothesis
- Deductive reasoning is highly vulnerable to confirmation bias
- Confirmational bias can corrupt and insulate forensic evaluation to the detriment of all involved
- Resist/refuse dynamics require be understood through an inductive process that is open to all possible hypotheses
- A survey of the literature identifies at least thirteen mutually compatible hypotheses, all of which need be evaluated
- Confirmational bias can be used either for forensic family evaluation or to ensure that resistance/confirmational bias and resistive inductive investigation

Keywords: *Abstract: Child Custody; Confirmatory Bias; Coercing; Dynamic; Forensic; Engagement; Refusal; Bias; Resist/Refuse; Transgression*

"I suppose it is tempting,
if the only way you have is a hammer,
to treat everything as if it were a nail."

Martin (1960) (p. 15).

By definition, child custody evaluators are asked to engage in a work. Given a family's dysfunction and distress in the present, one must, either intervene as a Court Involvement Therapist (Follick, Koss, Green,

Corresponding: bdgarber@familycourtreview.org

The author is honored to have been invited to prepare this article for a special edition of *Family Court Review*.

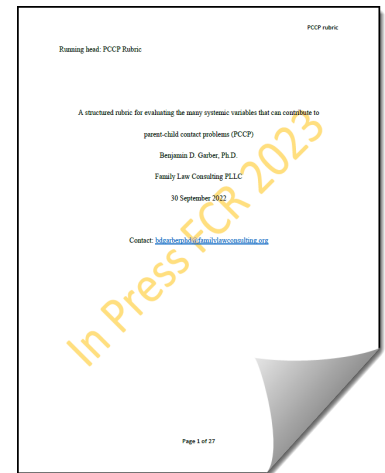
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Rubric

A structure or checklist
of criteria each of which
must be addressed
in order to
complete the whole.

Garber, B.D. (in press, 2023). A structured rubric for evaluating the many systemic variables that can contribute to parent-child contact problems (PCCP). *Family Court Review*.



The rubric requires consideration of **six domains** of variables

1. Incidental sensory, temporal, and proximal factors
2. Child variables
3. Child-Parent A dyadic variables
4. Child-Parent B dyadic variables
5. Systemic variables
6. Extra-systemic variables

1. Incidental sensory, temporal, and proximal variables

Is there evidence of?	<input checked="" type="checkbox"/>
(a) Is the child's resistance recent and abrupt? If so, what triggers?	
(b) Is the child's resistance event- time- or place-specific?	
(c) Is the child's resistance associated with access to peers, siblings, step- and half-siblings?	
(d) Is the child's resistance related to her negative experience with or expectations about a third party or animal associated with Parent B (e.g., new partner, neighbor, pet)?	
(e) Is the child's resistance related to sensory (i.e., visual, olfactory, auditory, tactile, and/or gustatory) experiences at transition or anticipated in Parent B's care that may be subjectively aversive or overwhelming?	

Sounds?
Smells?
Textures?



Avoiding the war
that erupts at
transition, not
Parent B
him- or herself



2. Child variables

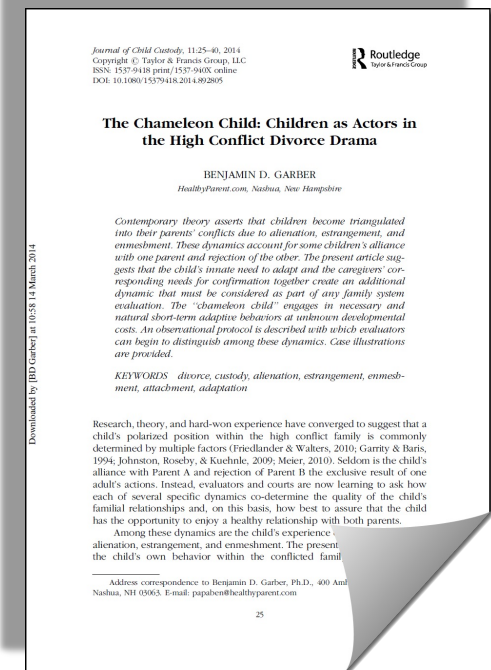
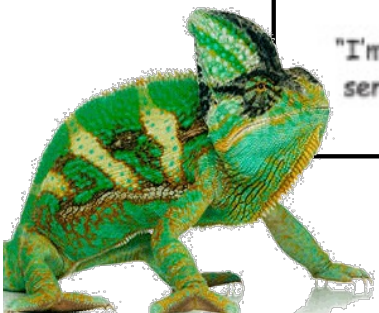
Is there evidence of?	<input checked="" type="checkbox"/>
(a) Is the child's resistance associated with temperament?	
(b) Does the child resist change, transition, and/or separation across contexts (i.e., not exclusively when transitioning between care environments)?	
(c) Is the child's resistance due to diagnosed/diagnosable social, emotional, behavioral, and/or cognitive differences?	
(d) Is the child's resistance due to a history of trauma not exclusively associated with either adult?	



Anxious?
Cautious?
Slow-to-warm?
Separation
anxiety?
Autism spectrum
disorder?

3. Child-Parent A dyadic variables

Is there evidence of?	<input checked="" type="checkbox"/>
(a) Is the child's resistance due to a relationship affinity appropriate to the child's experience, development, and culture?	
(b) Is the child saying and doing what the Parent A needs to hear and see in order to maintain love and/or avoid anger and rejection? Does the child respond in a similarly chameleon-like manner with others?	
(c) Is the child's resistance associated with Parent A's threats, promises, and/or bribes as in "If you don't tell the evaluator you want to live with me I'll kill myself" or "If you tell the GAL you want to live with me I'll get you a car."	
(d) Does the child resist all separations from Parent A but manages separations from others?	
(e) Enmeshment: Are the interpersonal boundaries between Parent A and the child appropriate to the child's developmental capacities and the ambient culture? Is the child adultified, parentified, and/or infantilized in this relationship?	



Garber, B.D. (2014). The chameleon child: Children as actors in the high conflict divorce drama. *Journal of Child Custody*, 11, 1-16.

DSM Next: Parent-Child Relationship Disorders



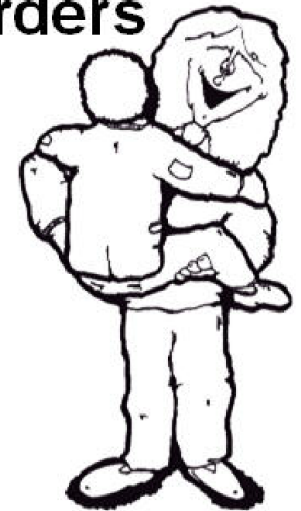
The Enmeshed Dyad



The Adultified Child



The Parentified Child



The Infantilized Child

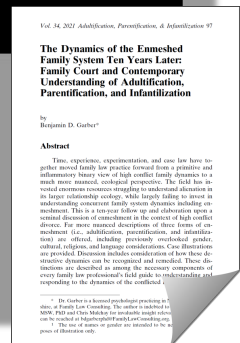
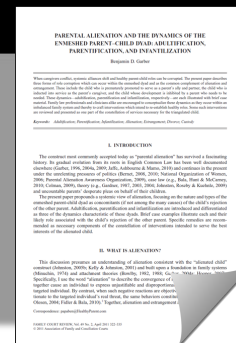
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Cathartics

www.Healthyparent.com

Garber, B. D. (2011). Parental alienation and the dynamics of the enmeshed parent-child dyad: Adultification, parentification, and infantilization. *Family Court Review*, 49(2), 322-335.

Garber, B.D. (2021). The Dynamics of the Enmeshed Family System Ten Years Later: Family Court and Contemporary Understanding of Adultification, Parentification, and Infantilization. *Journal of the American Association of Matrimonial Lawyers*, 34, 97-120.



4. Child-Parent B dyadic factors

Is there evidence of?	<input checked="" type="checkbox"/>
(a) Did the child ever have a relationship of any sort with Parent B?	
(b) Does the child experience Parent B's behavior, language, habits, beliefs, or activities as foreign, unacceptable, or embarrassing?	
(c) Estrangement: Has the child directly experienced Parent B as insensitive, unresponsive, abusive, or neglectful toward her?	
(d) Estrangement: Has the child directly experienced Parent B as insensitive, unresponsive, abusive, neglectful, destructive or threatening toward others including animals and objects (i.e., vicarious exposure)?	
(e) If the child has direct or vicarious negative experiences associated with Parent B, do these constitute trauma that trigger extreme anticipatory anxiety, dissociation, flashbacks, resistance and/or refusal of contact?	

Direct experience of
insensitive, unresponsive care



Vicarious
experience of
insensitive,
unresponsive
care



5. Systemic variables

Is there evidence of?	<input checked="" type="checkbox"/>
(a) Is the child's resistance to Parent B associated with an avoidance of the (emotional, verbal, and/or behavioral) conflict that erupts when the two adults are face-to-face?	
(b) Is the child's resistance to Parent B an effort to avoid "culture shock"?	
(c) Does the child experience the culture in one home as more aversive than the other? For example, teenagers may gravitate toward a permissive parent's home and away from an authoritarian's parent's home.	
(d) How has each parent scripted the adult separation, the adult conflict, and the other parent's role in the child's life for the child?	
(e) Is the child escaping the adult conflict by arbitrarily picking sides?	
(f) Alienation: Is this child's resistance/refusal of Parent B associated with her exposure to Parent A's (direct or indirect; intended or incidental) negative words, behaviors, and/or emotions about Parent B? This includes Parent A's effort to enroll the child as her spy, courier, or go-between to the extent that these actions communicate that Parent B is not safe or trusted.	

"culture shock"



Alienation



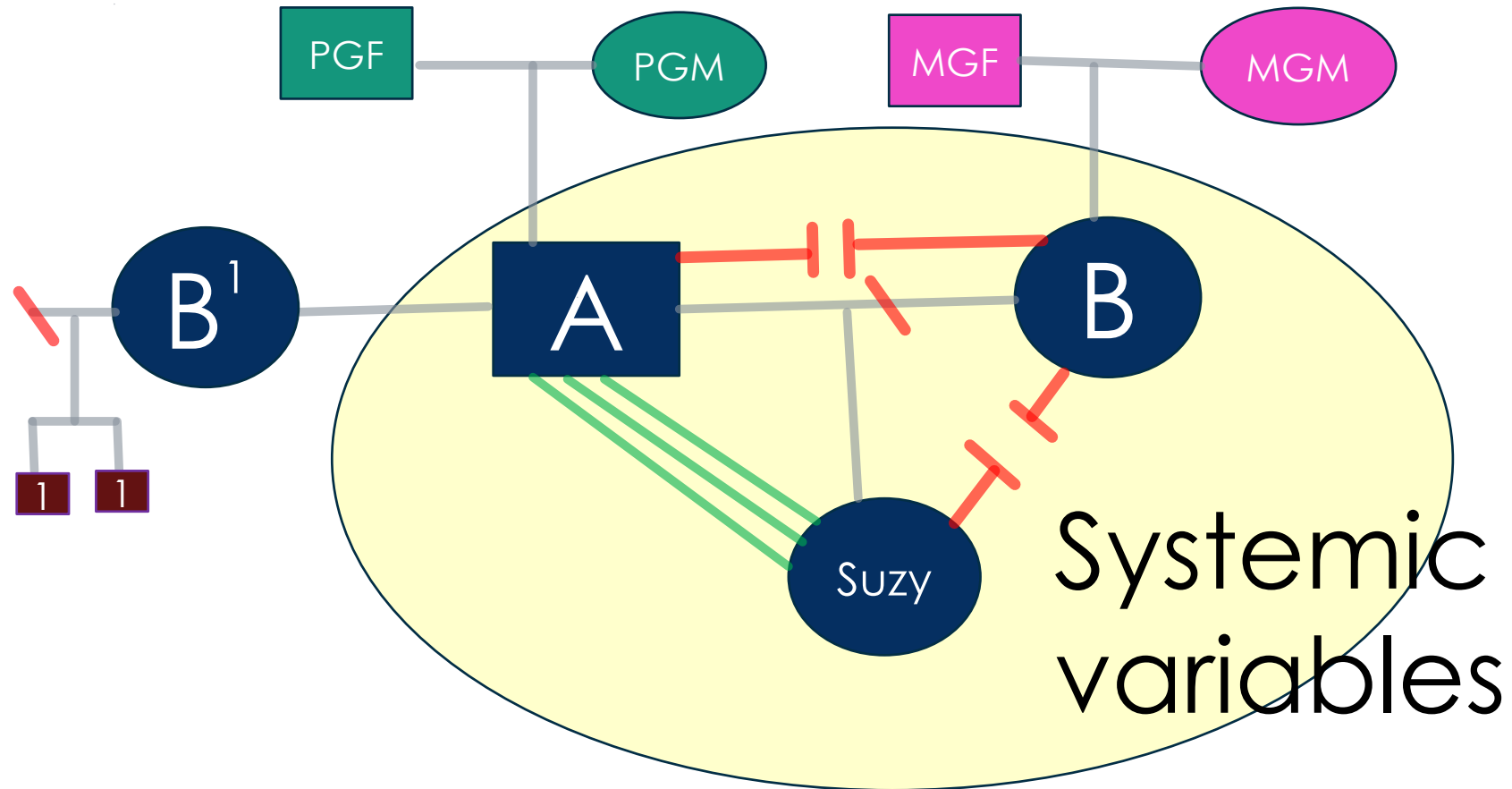
Can a modified 5FM assist in identifying alienation as one variable relevant to the child's unique socio-emotional ecology?

Yes

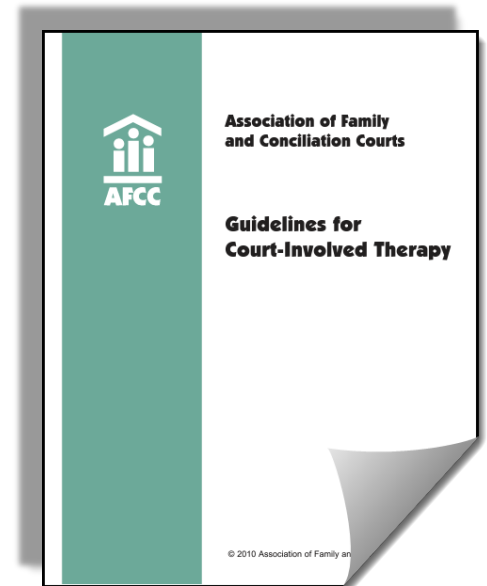
6. Extra-systemic variables

Is there evidence of?	<input checked="" type="checkbox"/>
(a) Extended family influences including grandparents, step-parents, uncles, aunts, siblings?	
(b) Professional helper bias including teachers, coaches, clergy, and THE SILOed THERAPIST	
(c) Is the child missing desired activities in Parent A's community while with Parent B?	
(d) Is the child avoiding undesirable activities in Parent B's community while with Parent A?	
(e) How do media and other models influence the child's choices?	

Extra-systemic variables



The silo-ed
therapist
is one common example
of an extra-systemic
influence that must be
addressed.



Always start by asking the right question



What combination
of factors is
causing this child
to align with Parent
A and resist
contact with
Parent B?

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Welcome!

About Dr. Garber

Dr. Ben Garber is a New Hampshire licensed,

Psychologist

Publications

publications, and ten books focused on topics in child and family development, divorce, family law practice, and the dynamics of the conflicted family system.

Dr. Garber provides large group trainings to family law professionals around the world. His presentations are entertaining, engaging, and challenging. He is well-known for his ability to make complex theory and complicated practice into common sense, practical basics.

More than anything, Dr. Garber works to focus the complexities of family relationships, the science of psychology, and the rigor of the law on the needs of each child.



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Outline
21.09.2024

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Publications

Dr. Garber is an award-winning author. He writes compulsively in the belief that the process of organizing, clearly expressing, and publishing ideas and experiences is one of the best ways to clarify thinking, minimize bias, and gain perspective.

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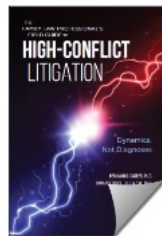
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We can do no great things.
Only small things with great love.



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