

On a Sticky Wicket

Representing the Best Interests of Brainwashed and Programmed Children in High-Conflict Child Custody Cases

ASHISH JOSHI

The author is a senior editor of *LITIGATION*, the Section's publications and content officer, and the author of *Litigating Parental Alienation—Evaluating and Presenting an Effective Case in Court* (ABA 2021).

Consider this scenario: You are appointed as the guardian ad litem (GAL) in a high-conflict child custody litigation. The nine-year-old child has aligned with her father and is refusing to spend any time with her mother. Despite a significant history of maternal love and care, the child claims that the mother has “abandoned us” and, with no evidence in support, alleges that her mother has a “drinking problem.” When speaking of her mother, the child, who is otherwise polite, respectful, and well behaved, uses words like “slut,” “whore,” and “sinner.” Court-ordered parenting time and visitation with the mother are routinely and consistently violated. Child-exchange transitions between the parents turn into nightmarish scenarios as the child demonstrates hysterical behavior and refuses to go with the mother. There is a history of multiple police interventions and child protective services investigations. The frustrated mother keeps demanding court intervention, and the court appoints you to investigate the matter and advocate for the child’s best interests.

During your interview of the child, she tells you sordid tales about her mother in an uncharacteristic, unchildlike manner: Mom is “abusive,” “never cared for ‘us,’” yells “for hours,” “drinks like a fish,” “violates my boundaries,” and “sins.” You spend significant time reviewing the child protective services’ reports, which have found no evidence to substantiate abuse allegations against

the mother. You review the records of the child’s therapy—session after session spent in “therapy” with the therapist listening to the child’s tirades against her mother. You wade through the maze of legal filings that the parties have filed, with the father accusing the mother of being abusive and the mother accusing the father of alienating, brainwashing, and programming the daughter. Legal fees and costs have spiraled out of control. Something must give. Amid this chaos, given the child’s adamant refusal to see her mother, the father requests that you listen to the “voice of the child” and recommend to the court a “cooling off” period; that is, to suspend the mother’s parenting time and give the child some space to process her feelings and emotions. The suggestion, as innocuous it sounds, appears reasonable to you and you are seriously thinking of making that recommendation to the court.

Guardian, be careful. Be very careful. You could be dealing with a brainwashed and programmed child; and as every cricket aficionado knows, you could be playing on a dangerously deceptive sticky wicket—the damp, slippery pitch on which the ball bounces in front of the batsman in unpredictable ways.

Brainwashing and programming are the *processes* that may lead to parental alienation, the *result* of such processes. Parental alienation is a form of emotional abuse and a result of tactics and strategies employed by one parent trying to undermine and

destroy to varying degrees the relationship that the child has with the other parent. It is an unjustified campaign of denigration against a parent, often referred to as the “target parent.” Alienation is not the same as estrangement, where the child’s rejection of a parent is due to the parent’s abusive, neglectful, or seriously deficient parenting. The critical factor that separates alienation from estrangement is that the child’s rejection of the target parent is based on a false or unreasonable belief that is *significantly disproportionate* to the child’s actual experience.

Professional literature, clinical experience, and judicial case law all teach us that in cases of parental alienation, suspending contact between the child and the target parent often makes the situation worse. With a “cooling off” period, the child ceases to have contact with the target parent and is completely vulnerable to the insidious influence of the alienating parent. Under the influence of the alienator, the child may not be cognitively or psychologically able to express a custodial preference in his or her best interests. Courts have recognized that in an alienation setting, children are impressionable, have social deficits, and could be manipulated. See *Harner v. Harner*, 2018 WL 521863 (Mich. Jan. 23, 2018). In such cases, a GAL, prior to making a recommendation to the court, should strive to assess whether the child’s perception of the target parent is a result of brainwashing and programming by the alienating parent or based on the child’s own experience with the target parent.

Brainwashing and Programming: Not Quite Cricket

The terms “brainwashing” and “programming,” like the related term “alienation,” have been acknowledged and used by courts. See *Bhama v. Bhama*, 169 Mich. App. 73 (1988). The term “brainwashing” originates from the words “hsi nao”—which means “to wash the brain”—used by a Chinese informant who spoke of mind control tactics employed in China following the Communist takeover. In their informative and insightful book, *Children Held Hostage*, Dr. Stanley Clawar and Brynne Rivlin discuss the concepts and processes of “brainwashing” and “programming,” along with their findings from studying over 1,000 families over 20 years. The authors—a forensic sociologist and a clinical social worker—describe the processes of brainwashing and programming whereby a parent attempts to limit, damage, and interfere with the love, contact, and image of the target parent. See CLAWAR & RIVLIN, *CHILDREN HELD HOSTAGE: IDENTIFYING BRAINWASHED CHILDREN, PRESENTING A CASE AND CRAFTING SOLUTIONS* (ABA 2d ed. 2013). The processes are socio-psychological in scope, could be intentional or not, and where employed, could result in severe social, cognitive, and emotional distortion in the child’s perception and experience of the target parent. Let’s look at how the process works.



In programming a child, the parent provides a “program”—a set of instructions or directions to assist the child in organizing and interpreting the “data” he or she is perceiving. For instance, a programmed child observing a dad who is late for pickup may perceive him as “uncaring” or “incompetent” and not be open to other possibilities, such as rush-hour traffic or a stop on the way to fill up the car’s gas tank. Brainwashing, in contrast, involves the action component: techniques, processes, and methods to reinforce the “program.” To continue with the above example, it may involve the mom telling the child, “I hate it how he’s *always* late in picking you up. Just shows how uncaring he is. He doesn’t deserve you.” Together, these processes involve the rewriting of history, the reorganization of experiences, and ultimately, the remaking of the person—the child, who slowly but steadily loses the ability to think critically and rely on his or her own experience of the target parent. The attempt is to remake the thought process of the child in a way that the child becomes ideologically aligned with the brainwashing and programming parent and perceives the target parent in a false, skewed, and distorted light.

Brainwashed and programmed children mimic signs and behaviors of victims of religious cults who have been stripped of their identity and independent thought, and indoctrinated into a mindset that is conducive to the goals and objectives of the programmer parent. Brainwashing results in the three Ds: debility, dependency, and dread. See JOEL DIMSDALE, *DARK PERSUASION*:

Illustration by Daniel Garcia

A HISTORY OF BRAINWASHING FROM PAVLOV TO SOCIAL MEDIA 77 (Yale 2021). Brainwashed children end up having diminished capacity because they are dependent on the brainwashing and programming parent, deprived of neutral social support. They come to dread contact with the target parent.

Brainwashing and programming processes occur over time and involve repetitious use of particular techniques, procedures, and methods until the child begins to reinterpret reality and comes to question his or her original understanding, thoughts, feelings, emotions, and experience of the target parent. Clawar and Rivlin describe eight stages in the process of brainwashing and programming, which begins with an ideological component and ends with maintenance, tweaking and reinforcement of the brainwashing and programming techniques once the child has succumbed to the process. A brainwashed and programmed child puts a GAL on the back foot and poses a dilemma for this professional who is entrusted with the job of speaking with the child, investigating the controversy, and thereafter making recommendations to a family judge. GALs are required to consider a child's custodial preference and the child's perception, feelings, and experiences of the parents. But how to differentiate between a child whose perception of a parent is based on his or her own experience and a brainwashed and programmed child? How to figure out whether the angry nine-year-old sitting in your office, with the flushed face and carrying on a campaign of denigration against a parent, has been subjected to brainwashing and programming processes?

You start by taking baby steps: by having a conversation with the child.

Brainwashing and Programming Detection Factors

Interviewing a child reveals valuable information that could help detect whether the child has been subjected to brainwashing and programming tactics. Clawar and Rivlin have identified 25 detection factors from their detailed and repeated observations of children in forensic, clinical, and therapeutical settings. Of these 25, below are some of the detection factors that I have repeatedly encountered when litigating cases involving brainwashed and programmed children in family courts across the country.

Contradictory statements or behaviors. Brainwashed children often represent confused thinking: The child's ideas, desires, feelings, and emotions are at odds and in conflict. For instance, a child who says that she "hates" a parent and "would rather kill myself than go and live with the parent," but then runs over to hug the parent, is exhibiting contradictory words and behavior. It is important that the GAL pay careful attention to what the child *does* in the presence of the target parent versus what the child *says* about the parent. Is the child who complains of the parent being a "tyrant" and "abusive" relaxed and at ease with

the parent during a home visit—even to the extent that the child feels comfortable in teasing or challenging the allegedly "abusive" parent? Is there contradiction between what the child says to one parent versus the other? For example, a conflicted child could ask the target parent, "Can we order a pizza and have a movie night," but later report to the negative or hostile parent that the other parent "made" her eat "junk food" and "watch boring TV all evening."

Brainwashed and programmed children demonstrate unmanageability for no apparent reason.

Privy to inappropriate information. Human nature being what it is, it is not uncommon for divorcing parents to occasionally slip and make some unflattering comments about the other parent. In fact, as observed by an experienced domestic relations judge in New York, in the real world of post-divorce parenting, a parent who always takes the high ground, without ever succumbing to an occasional temptation to criticize the other parent, is worthy of "mythical ex-spousal sainthood." *J.F. v. D.F.*, 61 Misc.3d 1226(A), 112 N.Y.S.3d 438, at *25 (N.Y. Sup. Ct. 2018). But a brainwashing parent is a zebra of a different stripe. That parent engages in a consistent pattern of disseminating inappropriate, harmful information, true or false, without any sense of boundaries. That parent insists on brutal and total honesty, regardless of how it may affect a vulnerable child devoid of the emotional maturity needed to process such "honest" information. And often the insistence on honesty is a self-serving rationale to assuage guilt or shift blame. In a case in which I represented a target father, the mother testified that she had discussed her extramarital affair with her teenage son to "take that issue away from him [the father]." She confided in her son about her search for a "strong man" and why she "built relationships with other men while still married" to his father. Her son reported to the therapist that his mother "was looking for love," as he was becoming aligned with his mother in her vendetta against the father.

Collusion or a one-sided alliance. A brainwashed child works simultaneously with one parent and against the other parent.

The child is simply unable to see *anything* positive in the target parent. The child views the broken, divorced family in terms of “us” versus “him” or “her.” Any positive gesture from the target parent is rebuffed, distorted, and ascribed to nefarious motives. A Christmas or birthday present is characterized as a “bribe.” An offer to go to the mall for shopping together prompts a statement such as “Why are you wasting my college tuition on such frivolous expenses?” Time spent together planting tomatoes in the garden is later described as “Mom ordered us to work in the garden like slaves. She just had us so that she can get free labor.”

Spying on the target parent. Brainwashers overtly request that a child spy on the other parent. It could be to retrieve financial information, confidential legal communications, or social information that could be used against the parent, such as information about the parent’s romantic or dating partners. The child spy secretly examines the handbag; opens mail; looks through checkbooks; scrolls through emails, text messages, and photographs saved in a smartphone; and dutifully reports back to the other parent. I have watched home security video footage of children going through the target parent’s bedroom closet and drawers while the other parent was on a speaker phone providing step-by-step instructions on what exactly to look for and photograph for use in litigation.

Unchildlike statements. Brainwashed children make statements that are at odds with their cognitive and emotional maturity. For instance, an eight-year-old spoke of his mom’s “sinning” and used words such as “whore,” “slut,” and “promiscuous.” Another young child claimed his dad is a “pathological liar” and utters “lies after lies after lies.” When questioned further as to what these words mean, these children avoid eye contact, lack emotion, and cross their hands in front of their chest. Their interest in the conversation veers away. Brainwashed children also demonstrate black-and-white thinking and polarization. They have an unusually rigid, all-encompassing negative view of the target parent. They refuse to see anything good or positive in the target parent. When shown photographs of his dad coaching his middle school soccer team, a 12-year-old left me stumped by dismissing it as “fake evidence.” Also indicative of programming is the use of adult language that is not consistent with the child’s normal choice of words. So, where most young children would use the words “hit,” “spank,” or “push” to describe an incident of parental discipline, a programmed child may speak of how the parent “abused me” or “violated my boundaries” but without being able to provide detail.

The martyr parent. Here, the child is brainwashed and programmed into viewing one parent as being more aggrieved and as a victim, which creates a sympathetic alliance with the parent. The brainwashing parents portray themselves as selfless martyrs who have “sacrificed” their lives to prioritize the child’s needs. So, if the father chooses to remarry, the mother is the one who

has made the child “life’s priority” (never mind that the mother may be embittered, obsessed with the post-divorce litigation, may suffer from chronic depression, or may be a workaholic incapable of engaging in enriching social interactions). These “martyrs,” unable to maintain boundaries and separate their identify from the child’s, portray the other parent as having not only hurt the brainwasher but also the child—“if he really loved *us*, he wouldn’t have divorced *us*.” The child’s repeated use of the words “we,” “us,” “them,” and “ours” when speaking of the favored parent and the other parent is a cause for concern and should be carefully explored in the interviews. It could be an indicator of the loyalty bind that the child faces.

Your job is to make recommendations in the best interests of the child, not what the child wishes for or appears to want.

Irrational fear of the other parent. A GAL should carefully investigate the validity of a child’s fearfulness of a parent and its antecedents, and should juxtapose them with the historical relationship that the child has had with that parent. Some fears have no basis and are irrational and induced through brainwashing and programming tactics. It is not necessary that the brainwashing parent intentionally or consciously cause a child to make statements indicating fearfulness of the other parent. Children are highly suggestible and can be influenced to behave in a way that will please a parent and meet his or her needs. For instance, in reviewing the therapy records of a child who had expressed a strong fear of her father in a post-divorce custody dispute case, I came across multiple session notes where the mother had brought the child to the therapist and told the therapist—in front of the child—“Little Susie has tremendous anxiety and fear about seeing her dad. What can we do to help her?” It was not surprising that once the mother left the child with the therapist, having set the stage, Little Susie played to the mother’s expectations and spoke of her fear of her father and how “traumatic” it was to spend the weekend with him.

Borrowed scenarios or scripted views. An eight-year-old “remembered” how his father locked him a dark bathroom, refused

to give him food, and yelled at him “for hours.” He had made these same complaints to his therapist, who had accepted the narrative without any inquiry or corroboration. But when I gently tried to go beyond the superficial but emotionally powerful narrative of the father’s abusive parenting, the child was unable to give specific detail. When did the father do this? “I don’t know.” How often did he do this? “I don’t know.” Was anyone else present in the home when this happened? “I don’t remember.” Finally, the child blurted out, “I *know* this happened because my mom told me all about it and I have it written down somewhere!” Brainwashed children convincingly speak of incidents that they have never witnessed or experienced but have repeatedly been *told* about. On the flip side, children who *have* witnessed scenes that they have described in detail later express doubt and assert a new narrative of the original scenario after the brainwashing. A five-year-old reported to the police that she had witnessed her father push her mother to the ground. A few weeks later, the child reported that she had witnessed the mother slip and fall to the ground and that the father was nowhere around. Further questioning revealed that the father had convincingly confused his daughter by rewriting history and telling her that she was too far away from the incident and upset by the mother’s “accident” to remember anything. And, for a good measure, he had added, “You don’t want Daddy to go jail, do you? You will never see me again.”

Inexplicable unmanageability. Brainwashed and programmed children demonstrate unmanageability for no apparent reason. The brainwasher parent may overtly give a child permission not to obey the rules or expectations of the target parent. These children are shockingly rude and disrespectful toward the target parent, refuse to follow the house rules, engage in name calling, and create overall chaos in the parent’s home. But outside of the target parent’s home, the child appears to be well adjusted, conforms to the norms of society, and rescues little kittens. The unmanageability and the borderline sociopathic behaviors happen only at the target parent’s home, which then leads the brainwasher to come to the rescue by saying, “This never happens at my house,” and offering a solution: Give the child a break and suspend visitation with the target parent. Suspending contact between the child and the target parent entrenches alienation further: The child is left with the brainwasher to continue to be exposed to the propaganda and is bereft of any contact with the target parent, who is then unable to try to counter the negative propaganda of the brainwashing parent. Nevertheless, the target is caught in a “damned if I do, damned if I don’t” dilemma. An attempt to discipline the unmanageable child is seen as “authoritarian” parenting, but ignoring the child’s behavior is seen as too lenient or enabling.

Evidence of brainwashing and programming could be gleaned from a thorough and systematic review of the case file, which

could include legal pleadings, audio and video recordings, emails and text communications, photographs, witness interviews, therapy records, police and protective services reports, medical records, and children’s interviews. But the most persuasive evidence of brainwashing and programming can be obtained by comprehensive and careful interviews with and observations of the child.

Ten Tips on Interviewing Brainwashed and Programmed Children

As you walk out to bat on a sticky wicket, here are 10 tips on interviewing children suspected of being brainwashed and programmed.

1. Avoid getting clean bowled in the very first over of the match. A brainwashed and programmed child is a loyal foot soldier of the hostile, negative parent. Your interview style should be nonconfrontational, nonjudgmental, supporting, and matter-of-fact. More along the lines of “Can you help me understand why you said . . . ?” rather than “You are too young to understand. Don’t you see . . . ?” Do not attempt to convince the child how he or she has it all wrong. That will almost always result in the child reporting the content to the brainwasher/programmer, who may sabotage the investigation or contaminate the process.
2. Do not skimp on net practice. Skilled batsmen and bowlers who shine in the field spend countless hours perfecting their cricketing techniques. Prepare thoroughly for the interview. Do not let the fact that you are interviewing “just a child” lull you into complacency. Before your interview, read the relevant case material. If the child’s statements against the target parent have been memorialized in third-party reports, such as police reports or therapy notes, it is important to review them prior to the interview. Try to learn about the “baseline” relationship that the child had with the parent who is now being rejected. Did the child always have a tension-filled or fractured relationship with the parent? Or was the relationship normative and “good enough” prior to the separation or divorce of the parents?
3. Do not try to hit for six on the first ball. Get to know the child gradually to build trust and rapport. These interviews are stressful and strange experiences for the child, who may be under tremendous pressure to make a case against the target parent. Sharpen your listening and observational skills when interviewing children. What they say can be revealing and provide clues to overt and covert brainwashing and programming techniques at play. But also watch out for nonverbal communication: the child’s body language, affect, presence or absence of eye contact, shift in mood, sensitivity toward certain issues or topics.

4. Ask open-ended questions. If the child is resistant to having contact with the target parent and complains of that parent's parenting style or home environment, ask the child to tell you about the child's routine, day-to-day experience with the parent. "Tell me about your day when you last saw your dad" or mom. What did the child do throughout the day or weekend? Were there *any* good interactions? Any fun activity? Any meaningful engagement between the child and the parent? Will the child acknowledge that *some* part of the visit was good?
5. If an opportunity presents, go for the pull shot—one of the deadliest shots played by batsmen when the ball delivery is between waist and shoulder height. Depending on the age of the child and the rapport that you have built, it may be helpful to ask pointedly, "Is there anything you were told to tell me [or not tell me]?" The child's answer or non-verbal communication may expose the loyalty bind that the child is experiencing as a result of brainwashing and programming.
6. Watch out for shutdown messages. Clawar and Rivlin describe these as "messages implanted by the programming/brainwashing parent in order to prevent deprogramming." They include ideas such as "Don't let anybody tell you. . .," or "If you tell anybody that I said or did this, I could be in serious trouble." You can tell that a shutdown experience is taking place when the child is willing to talk but abruptly shuts down for no apparent reason. The child avoids talking about a particular incident or issue. Identify the issue for the child, and then invite the child to gently explore it together.
7. Be careful to maintain neutrality regarding both parents. Adopt a problem-solving attitude, instead of finding who is at fault. Clawar and Rivlin provide an insightful example of an interview between a judge and a 10-year-old child, in which the judge tells the child that "sometimes it's helpful to play detective to kind of figure things out," and requests the child's help rather than forcing a position.
8. Observe the child with each parent in each parent's home. Take note of the child's nonverbal communication with the target parent. Is the child who alleges fear of the parent at ease with the parent outside of the other parent's presence? Watch what parents say (or don't say) about each other in the child's presence. Look for nonverbal communication as well. Does the dad turn away from the child when the child speaks of the mom, or does the mom have a facial expression of disgust, anger, or anxiety when the child speaks of the dad? Does the child's room have photos with, mementos of, or gifts from parent A at parent B's home and vice versa?
9. Watch out for a *googly*—a deceptive delivery, where the ball spins after pitching and goes in a different direction than

where the batsman was expecting. If the favored parent makes claims of encouraging and facilitating the child's relationship with the rejected parent, are such claims supported by evidence? Ask to see texts, emails, voicemails between the child and the parents. You may find, as did a Tennessee trial judge, that a father's claims to foster a relationship between the child and the mother was disingenuous and duplicitous, where the father sent texts to the child stating the mother was "mentally ill," that "nobody likes her," "the bible tells us clearly that mental illness is a spiritual problem," and "you have a right to be ugly to her." *McClain v. McClain*, 539 S.W.3d 170, 194–95 (Tenn. Ct. App. 2017).

10. Avoid being duped by a *yorker*—a ball that hits the pitch around the feet of the batsman, making it difficult for the batsman to play the delivery. Look closely at what may superficially appear to be a close parent-child relationship but may be a sign of enmeshed parent-child dyad. Enmeshment leads to a breakdown of healthy parent-child boundaries, role corruption, and role reversal. It may take form of *parentification*, in which the parentifying adult enlists the child to fulfill his or her need to be cared for. For instance, a nine-year-old child being visibly upset during a home visit by a GAL because her mother has not taken her daily dose of medicine. Or it may take the form of *adultification*, which is characterized by a parent's enlistment of a child in a partner-like role in which the child becomes the parent's "buddy," confidant, and ally. Such as a father sharing the details of the mother's extramarital affair with the children because he believes in "honesty" and that the "children have a right to know the truth." Both parentification and adultification are forms of child psychological maltreatment.

Conclusion

Brainwashing and programming cases, like those involving parental alienation, are hard to litigate. As a GAL, you will not only have to learn the science but also be prepared to educate the court and debunk several fallacies and misconceptions that prevail in these cases. See Richard Warshak, *Ten Parental Alienation Fallacies That Compromise Decisions in Court and in Therapy*, 46 PROF. PSYCHOL.: RES. & PRAC., no. 4, 235, *passim* (Aug. 2015). Your job is to make recommendations in the best interests of the child, not based on what the child wishes for or appears to want. Your recommendations to the court could result in major life-altering decisions for a child, save a precious parent-child relationship, and help the child get appropriate mental health treatment. The wicket is sticky, but with preparation, practice, and perseverance, you will hit the ball for a six and knock it beyond the boundary. ■