



Weaponizing Clinical Mental Health in Family Justice Courts: Ethical and Legal Minefields

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In child custody litigation, parents engage in complex and iterative patterns of conflict. These patterns may include allegations of interpersonal violence, addiction, mental health disorders, and parental alienation. In such cases, a licensed mental health professional (LMHP) may be providing clinical services for a child. However, the education and training of LMHPs may not include a thorough understanding of risk when exposed to child custody litigation, including ethical complaints and civil lawsuits. This article explores preventative strategies for managing that risk by applying a forensic model for case management when child custody conflict and litigation enters the clinical portal.

Keywords: Child custody; social work ethics; family justice courts; forensics; risk management; parental alienation

INTRODUCTION

For many decades now, licensed mental health professionals (LMHP)¹ have been deeply involved with treating children who must navigate and survive various forms of parental conflict, including interpersonal violence, emotional abuse and neglect, and other adverse childhood experiences (Cohen & Levite, 2012; Fosco & Grych, 2008; Lebow, 2003; Mercer, 2019). Millions of younger children experience various levels of physical and emotional maltreatment while their parents² are separating or divorcing or are involved in child protection cases (Anderson 2014; Anderson et al., 2021; Aughinbaugh et al., 2013). As legally allowed in the United States, parents are entitled to litigate and re-litigate claimed rights to a child by filing new motions to modify, based upon state law. Chronic and sustained child custody conflict itself may submerge children in maladaptive parenting patterns that influence outcomes over a life span (Bethell et al., 2019; Murphy et al., 2014).

There are many lawyers and judges who diligently encourage parents to engage in clinical services that benefit children and reduce parental conflict, and that is worth encouraging (Dore, 2004; Reamer, 2018; Scott & Emery, 2014). However, the risk gap that has evolved is that the good intentions of LMHPs to provide their knowledge and experience may conflict with the role of an adversarial system. An LMHP who does not grasp the differences and consequences between *being a clinician* and *becoming a forensic witness* once records are sought or on the witness stand and under oath may find the lesson painful at many levels. Thus, the education and training of LMHPs may not include a thorough understanding of risk when exposed to child custody litigation, including ethical complaints and civil lawsuits. This article explores preventative strategies for managing that risk by applying a forensic model for case management when child custody conflict and litigation enters the clinical portal.

For example, one of the core objectives in treatment is establishing rapport by building trust and engaging the client in positive change. In that context, consider this thought experiment undoubtedly familiar to readers across disciplines:

The mother and her lawyer insist that her therapist testify at her child custody trial and send a subpoena for records and testimony in court. The therapist warns against this as it waives confidentiality. The therapist even reminds the parent of the agreement never to call her as a witness in the case and that the client is the child. Client and lawyer insist.

On direct examination by the mother's lawyer, the therapist is asked if she told her client that she was a "good mother" when they met after the child's sessions. The therapist responds, "Yes, I did." The lawyer, with her client, sitting but a few feet away

¹ The laws in each state may be very different as to the education and training required to receive the type of licensure that allows a person to practice independently and to diagnose and charge for clinical services (Weissman et al., 2006; Williams et al., 2021). There are different ethical codes and standards of care for psychiatry, psychology, social work, professional counselors, marriage and family therapists, or drug and alcohol counselors, among other protected titles; but for purposes of this article, the initialism LMHP will refer to any licensed professional providing clinical mental health or behavioral services to a child.

² Use of the term *parent* is complex today as it is not limited to biological or birth parents but may include kinship, adoption, guardianships, de facto parents, state agencies, stepparents, and surrogacy and IVF. For purposes of this article, parent is intended to mean any person who has legal rights recognized by statute or court order. In some cases, the challenge for a LMHP may include family systems much larger and more complex than just two birth or biological parents (Carbone & Cahn, 2014; Esping-Andersen & Billari, 2015).

smiling gratefully, then asks if anything during the treatment suggested an inability to parent her child. The reply, “No, she is cooperative, insightful, and a loving mother.” The mother’s lawyer proudly says, “Nothing further, your honor,” and sits down, with his client reaching over approvingly.

The lawyer for the father then rises from his seat and asks the child’s therapist, “You have never seen her with her children outside your office, have you?” The answer, “No, but...” The lawyer interrupts and then asks, “You tell her she is a good mother so that she will keep working with you and having the child attend therapy even though you know nothing about her parenting or her kids?” The mother starts to cry and never comes back to therapy with the child. The answer does not matter.

The vexing challenge is that the LMHP may assume that the lawyer for a parent knows the difference between treatment practices and the rudiments of forensic evidence to prevent that somewhat predictable harm in the presence of the judge. Not so true much too often. The example can be made more complex, but no less common, if the LMHP was also treating the child and the other parent in the agency with another therapist, was meeting with each parent and discussing the child without a clear treatment plan and with informed consent in writing at the initial appointment, voluntarily providing records to parents related to the child without supervision, voluntarily speaking with a guardian ad litem (GAL) who called, or offering to write a letter to share with the judge about the child with the promise that this was good enough to avoid testimony.

Understanding the differences in ethical duties between lawyers and mental health professionals and the overlay of an adversarial system is discussed in the next section. From that grounding, parental alienation (P.A.) or parental alienation syndrome (P.A.S.) will be addressed because it is a burgeoning part of the child custody market, particularly when families have resources. P.A. is one example of the challenges for LMHPs working with children subject to allocation and conflict in the court system. But it is not alone, as diagnoses, testing, and labeling are too often misused or distorted in courtrooms. Finally, this article will explore forensic models studied and implemented for decades, which may provide feasible strategies for LMHPs working with children when parental conflict and child custody litigation may be present or on the horizon.

THE SHARPENED EDGES OF THE ADVERSARIAL SYSTEM

Among the more profound and complex social welfare and societal challenges, the past 50 years is the dislocation and reformation of family systems from divorce and separation; child protection; foster and kinship care; and guardianship, remarriage, and cohabitation; among other variations on the definition and legality of family structures (Bramlett et al., 2017; Carbone & Cahn, 2014; Cherlin, 2010). When parents who separate or divorce cannot privately resolve disputes, some form of government intervention was required to prevent self-help with all the attendant risk of violence or harm to children. Just like any criminal and civil matters, the old trial courts, which existed since the inception of federal and state constitutions centuries ago, were assigned that duty and authority (Chute, 1953). These trial courts applied the scientific, social, and political biases of the era coupled with arcane and punitive laws about married and non-married parents, children born out of wedlock, and the rights of men, women, and children as property or worse (Krause, 1967; Lebsack, 1977).

In this historical context, one overarching policy and social problem, too often

ignored but specifically mentioned here for consideration throughout this article, is that there are profoundly embedded epistemic injustices: from disparate access to qualified lawyers or mental health services to implicit and sometimes explicit biases by judges and other professionals based on gender, race, cultural, and socio-economic status (Hogan & Siu, 1988; Kohm, 2007). Financial capacity and membership in privilege groups may dictate the judicial system's tolerance for the depth, intensity, and duration of litigation likely determine when parents can access legal and mental health professionals to explain why their children should suffer from protracted litigation or "gaslighting" and abuse of the legal system by one parent toward the other (Labatut, 2022; Sweet, 2019). Parents without those resources may view themselves as more undeserving and blameworthy (Chill, 2003).

Although only a brief discussion, understanding the design of judicial systems is critical to developing any preventative strategy for clinicians related to child custody litigation. The judicial system, rooted in constitutional authority, is charged with allocating rights and responsibilities by court order after a trial when cases do not settle and amending and enforcing by sanction iterations of litigation by one parent suing the other parent. Even as many advocate for reform, understanding that system is prudent by itself. Thus, it is argued in this article conflating clinical engagement with children living under custody court orders suggests prevention strategies drawn from the specialized discipline of forensic mental health experts (FMHE) and its intersectionality with family court systems (Maschi & Leibowitz, 2017; Prescott, 2020; Reamer, 2017).

Whatever the graduate education level and post-degree training, LMHPs working with parents actively engaged in litigation are immersed, willingly or not, in an intentionally designed adversarial system (Prescott & Tennies, 2018; Reamer, 2018). As family justice courts currently function in the United States, LMHPs treating children are exposed to releasing confidential and possibly inflammatory records; testifying at a deposition or in a courtroom no matter the risk to the child; incurring unpleasant examination by lawyers and judges; and enduring social media and professional complaints from parents, relatives, other LMHPs, and forensic experts hired by either or both parents. And those are predictable consequences in "ordinary" child custody cases.

Policymakers and an interdisciplinary array of professionals have sought to reform adversarial methods that too often require children to testify, parents to testify to spiteful and negative things that may never heal, and judges imposing fungible parenting plans always subject to enforcement and modification until the child is emancipated (Sauer, 2007). These reforms encouraged parental autonomy and self-determination, including education, mediation, alternative dispute resolution, and less toxic and rule-driven trial methods for parents and children (Elrod, 2001). Even with the contemporary reforms that created specialized family courts, one judge still finds the facts, as the judge perceives those facts (in what is called a bench trial), and applies the law in that state.

No structural reform, however well intended, can eliminate heuristics and biases, especially with an array of interdisciplinary experts in social science (Maldonado, 2017; Milchman, 2017; Schweitzer & Saks, 2009). For anyone who thinks these challenges in the translation of hard or soft sciences to the judicial decision making are novel, Hubert W. Smith wrote in 1943, "One result of our present adversary system of trial is that science may be born anew in every lawsuit where two experts disagree. That a scientific principle or finding can be true in A's case and untrue in B's case is squarely

opposed to the concept of the universality of scientific truth” (p. 275). As Benjamin Garber more recently summarized that point, “The torn loyalties, grief, rage, humiliation, and anxiety commonly generated by these matters, compounded by zealous advocates and exacerbated by the adversarial court system can compromise rational thinking for all involved” (Garber, 2020, p. 289).

Child custody cases were already complex, emotional, and expensive. Still, then a constitutional dimension, in the form of a fundamental right to be a parent, entered the courthouse portal in the context of child custody litigation (Burt, 1975; Buss, 2002; Logue, 2002). Inevitably, in a democratic society that reinforces the right to “rights” at every opportunity, these social and political iterations, now laden with a constitutional patina, fueled even more frequent and intense iterations between parents seeking court orders allocating physical and legal custody of their children (Garber, 2022; Weinstein, 1997). For example, when parents disagreed, courts were called upon to decide everything from parenting plans and allegations of interpersonal violence to medical care, educational enrollment, extracurricular activities, and even haircuts, pets, and transitional objects like a teddy bear (Garber & Prescott, 2019). No matter the good intentions of reformers, family conflict and iterative litigation, which may constitute a variation of or addition to adverse childhood experiences, continued in volume and complexity concurrent with shifts in community civility and political society.

The risk for children from parental conflict was (and is) exacerbated during the COVID-19 pandemic, with additional stress, emotional dysregulation, and cognitive impairments, coupled with the loss of school, nutrition, mental health, kinship care, and special education services as protective factors or safe harbors (Arnsten et al., 2021; Hails, 2021; McEwen & Prescott, 2022). Concomitantly, the COVID-19 pandemic has exposed the consequences of decades of drift into state judicial systems where families or the state file lawsuits—and all forms of litigation begin with a lawsuit—to resolve disputes that parents cannot settle privately. As these same family justice courts closed to the public, hearings had to be held on the internet rather than in person, judicial resources and backlogs worsened, and new forms of conflict, including arguments over vaccinations of children and the weaponization of COVID-19 under existing parenting orders increased (Goldberg et al., 2021; *Seymour v. Seymour*, 2021).

Even with reforms, the judicial system, as a co-equal branch of government, was institutionally ill-prepared and ill-designed to resolve such a volume and complexity of parental conflict by imposing, after the artifice of a trial, a ruling about the present quality of either parent to parent over many years and a child’s developmental lifespan (Garber, 2022). Of particular importance, the entry of such a judgment was premised upon the ever-evolving, vaguely defined, and indeterminate legal standard “the best interests of the child,” which itself represents a decades-long amalgamation of social science and public policy (Elrod & Dale, 2008; Emery & Emery, 2008; Goldstein et al., 1979).

As courts became more embedded in trying to mitigate and resolve child custody litigation, the clinical professions continued to develop graduate school programs that taught policy, human development theories, research methodologies, and evidence-based practice interventions to varying degrees of state licensure requirements. Eventually, the availability of LMHPs, together with the public and private desperation of undertrained and overwhelmed family court systems (lawyers,

judges, and administrative staff), found common ground: a state-licensed justification for judicial decision-making with the help of experts who provide predictive opinions of human behavior in the context of child custody or child protection.

At its core, however, some judicial decision-makers remain skeptical of social science evidence “because they suspect social scientists of using their craft as a smokescreen to cloak their personal values with the label of objective science” (Rustad & Koenig, 1993, p. 115). This concern is not new by any measure. Indeed, nearly seventy years ago, about the use of social science to rebut racial bigotry, Rose (1955) wrote:

Clever lawyers will probably increasingly be aware of the possibility of hiring social scientists to serve as expert witnesses for their side, and—if this happens—conscientious judges will either have to acquaint themselves with the possibilities and limitations of social science to decide when the social science evidence is reliable or else rely on court-appointed social scientists who are presumably neutral. (p. 215)

The ethical duty of lawyers to a client provides broad protection for proffering almost any form of expert opinion. The judge, not the lawyer, is the gatekeeper for the quality of evidence admitted at trial under current rules of evidence. When child custody conflict involves family systems with economic resources, the tension between lawyers finding experts and judges having to sort out personal values from science increases the risk to the LMHP. This risk when treating children is intensified by a national movement to label children, who may be survivors of physical, emotional, and economic abuse, as being “alienated” from one parent by another parent (Faller, 1998; Saini et al., 2012).

Most professionals with any licensure would agree that preventing ethical and legal complaints is preferable to interventions and potential sanctions later (Bow et al., 2010). Many LMHPs may never want to attend court or give an opinion about a child under examination. Some LMHPs even tell clients they will never testify, even having clients agree to that in writing at intake. In most jurisdictions and many child custody cases, that is unlikely to effectively prevent the LMHP from being part of a trial or providing records to an expert witness nominated by a parent or both parents (Amundsen, 2015; Ordway & Casasnovas, 2019). A parent’s good intentions and explicit promises do little to protect the LMHP or the child once the subpoena or releases arrive. And that set of consequences is particularly acute when P.A. knocks at the clinician’s door.

PARENTAL ALIENATION AT THE CLINICIAN’S DOOR

The origin story for P.A. has been explored in numerous articles and books, which is left to others (Mercer, 2019). Houchin et al. (2012) aptly summarized that the legal argument that parental alienation has “arisen from emotions emanating from custody battles, publicity, and economics rather than sound, scientific study” (p. 127). Long before its propagation, the fabric of custody and child protection cases revealed parents manipulating children’s loyalty, mental health or addiction struggles, interpersonal violence, and the sexual abuse and emotional and physical neglect of children (Bütz & Evans, 2019). Likewise, adultification, parentification, and enmeshment are present in conflicted family systems due to complex dynamics (Garber et al., 2022). The observation that there are thought distortions, lack of

empathy, and rigid black and white thinking that inflict such cruelty is not a novel point of view (Johnston, 1994).

In the current vernacular of *parental alienation* (P.A.), LMHPs helping children adjust and adapt within “ordinary” adversarial circumstances may be challenged by P.A. experts opining on the competency and integrity of the LMHP who lacks the expert’s unique insights and training (Joyce, 2019; Mercer, 2021). To be clear, LMHPs who undertake services for a child and choose to align with one parent, diagnose (“off the record”) a parent they never met, lack an explicit evidence-based treatment plan, do not implement a clear set of rules and procedures at the first intake, or infer opinions drawn from implicit biases regarding race, culture, or gender may justifiably struggle later to defend their professional conduct (Harman et al., 2016; Knapp et al., 2017; Tippins & Wittmann, 2005).

Although some may view this point as cynical or overdramatic, the “soul murder” of children wrapped in years of child custody conflict, in all its human variations, does significant harm to children and society (Burch, 1980; Shengold, 1989). Forty years of literature on the negative consequences to children, over lifespans, from chronic and sustained parental conflict is well established even when accounting for resilience and coping capacities, as well as family and community safety nets (Herman, 2015; Jekielek, 1998; Jouriles et al., 2014; Nielsen, 2017). The struggle to differentiate thinking and behaviors immutable with those that may be amenable to treatment sufficiently fast to protect a child during childhood remains a challenge for mental health professions and the legal system.

P.A. is proffered to judges as a scientifically grounded explanation for the behavior of children resisting contact with a parent and, as such, provides proponents with orthodoxy or means of argumentation (Bruns & Ganapati, 2020; Garber et al., 2021; Mercer, 2021). Few independent professionals would or could successfully argue that P.A., as currently developed, would be admitted in any federal or state court as expert testimony and opinion. Unfortunately, family court sets a relatively low bar for an expert opinion which is *ipse dixit* (Latin translated roughly for “because I say so”) of the expert if a court determines “that there is simply too great an analytical gap between the data and the opinion proffered” (*Gen. Elec. Co. v. Joiner*, 1997, p. 146). An expert’s bald assurance of validity is not enough unless the expert’s findings are based on sound science, grounded in objective, independent methodology validation (*Daubert v. Merrell Dow Pharms., Inc.*, 1993).

However, this yields a more general caution, as it is a critical reminder that any form of forensic, clinical, or social science hypotheses for study or the generalizability of a study may mislead or distract judicial decision-makers (Bubela, 2003). A historical exploration of these developments, akin to Kuhn’s (1962) analysis of “paradigm shifts” in the physical sciences, is beyond the scope of this article (though of worthwhile future study). What matters here is that the authority and privilege to proffer an expert opinion implicates, at a profoundly elemental level, the core values of ethical science and the duty of social workers and other mental health professionals to protect vulnerable parents and children as a matter of social justice. Moreover, P.A., like other conceptual frameworks when transposed specifically for judicial decision-making and not treatment, is generally disconnected from poverty, gender, race, unequal distribution of power and resources, and other forms of epistemic injustice (Howard & Colvin, 2021; Prescott, 2021).

Once experts are located, however, lawyers or parents might contact the LMHP to share the experts' research or industry literature, sign releases for disclosure of the child's records, and encourage treatment recommendations consistent with the opinion of the retained P.A. expert. This might take place kindly, aggressively, or incrementally: from a phone call to an email, with the possible outcome that the LMHP is reported as lacking the competence and training to understand and recognize P.A. (Doughty et al., 2020). From such coded language, ethical complaints or lawsuits begin to percolate with the accusation that the therapist lacks the unique insight to find that a parent is the "targeted" parent by the "alienating" or "preferred" parent.

When this coded language is adopted by P.A. proponents, data acquired by the clinician from therapy with a child who experienced intimate partner violence (IPV) and other abusive behaviors is deliberately rejected as "unjustified" (see, for example, self-designed research and legal arguments by Bernet et al., 2022). The unfortunate consequence is that any abuse of that parent or a child is either false, perpetrated by the preferred parent, or emotional, sexual, physical, and economic abuse is not serious enough to justify resistance (see, for example, the case study in Chester, 2021): This language should generate immediate caution for LMHPs before negatively "shackling" family dynamics to a P.A. (Burdzy, 2009; Lee-Maturana et al., 2019). What matters is that an LMHP's refusal to accept a P.A. is claimed by proponents as a lack of competency under professional codes of ethics, or even malpractice for breach of standards of care (Álvarez & Sánchez-Prada, 2017; Lubit, 2019). Critically, such claims will be played out in a family justice courtroom as expert evidence with the LMHP subject to little protection by the lawyer for the non-P.A. parent or, for that matter, the court as umpire. The opinion, as the legal language is used with a shrug by a judge, goes to "weight" no matter the harm to the child or the LMHP.

In this form, P.A. creates its folklore. Histories and patterns of abuse toward a parent or child fit the P.A. narrative. One parent is the "targeted parent." The other parent is the "preferred parent." Children who do not want the relationship demanded by the parent with P.A. experts—even if a child wants some form of access—need to fix the child's irrational and programmed thinking (Dallam & Silberg, 2016; Mercer, 2019; Taglienti, 2021). As Johnston and Sullivan (2020) recently summarized:

Commonly-used conceptions of P.A. that refer loosely or inconsistently to P.A. as a unitary cause, the process, and/or the result of a child's unjustified rejection of a parent tend to confuse and oversimplify what are essentially diverse and complex dynamics. Their use can potentially mislead the court, fuel mutual blaming between parents and stigmatize the children with an unwarranted psychiatric label. (p. 271)

Like a chameleon Wi-Fi virus, P.A. is a unitary but "self-replicating and self-propagating" program that "uses its networks to transfer itself from one source to another without any manual interference" (Zhang et al., 2020, p. 1). P.A. seeks no alternative data or multiple hypotheses as it propagates. In this ephemeral form, P.A. attaches automatically to soft targets like the mental health and court systems and, often without tangible interference, shifts the blame to victims of interpersonal violence or abuse (Faller, 1998; Meier, 2020; Stark et al., 2019). The evolving challenge for mental health professionals is that the marketing network for P.A. is global (Barnett, 2020; Moon et al., 2020; Rathus, 2020; Sheehy & Boyd, 2020; Vila, 2020).

Relying upon family justice courts to sort out the harm from P.A. one trial at a

time is unrealistic. The structural realities associated with child custody litigation suggest that preemptive and preventive strategies by LMHPs are warranted. As Appelbaum (2008) wisely noted, “professional ethics cannot contradict or subtract from the ordinary ethics obligations shared by all human beings. Still, it must constitute “an addition to that corpus of duties” (p. 196). In that sense, to consciously prevent bias or alignments or retroactive accusations of incompetence when a child may be subject to child custody conflict and potential misuse of treatment, suggests preventative measures and boundaries should be put into place from the point of intake. When working with children, the lessons drawn from the forensic mental health professionals provide an accessible and feasible means to protect both the child and the LMHP.

FORENSIC PRACTICES AND THE SHACKLES OF VERIFICATION

The practice of forensics by mental health professionals generally refers to any subdiscipline (e.g., clinical, developmental, social, cognitive) applying scientific, technical, or specialized knowledge to assist in addressing legal matters relevant to clients and judicial systems (American Psychological Association [APA], 2013; Butters & Vaughan-Eden, 2011; Maschi & Leibowitz, 2017; National Organization of Forensic Social Workers, 2021). The range and scope of forensic duties and ethics include intentional and preemptive techniques for managing biases and alignments, applying specialized knowledge and relevant research, painstaking evaluation of facts, transparent hypotheses that are accepted or rejected explicitly, and clear criteria for informed consent, confidentiality, and record management (Maschi et al., 2019; Roesch, 2015; Zapf & Dror, 2017; Zimmerman et al., 2009). In forensic social work, answering specific referral questions is co-extensive with the competency and integrity to organize, transfer reliable and relevant data, as well as specialized knowledge to decision-makers (Banks, 2012; Barker & Branson, 2014; Barsky, 2019).

Clinicians who approach child custody conflict with forensic methods, as well as answers to the questions below, in the foreground, not the background, benefit that child’s treatment and LMHP self-protection within the “sprawling thicket” of the courts (Green et al., 2005). In that context, it would be prudent for clinicians to consider these types of questions from the moment of intake: What is your explicit and documented intake process for informed consent before you begin treatment? When and under what circumstances do you meet with the parents, and in what order, if at all? How does that process help you avoid alignments and implicit biases, subtle or overt? Who holds the legal and ethical power of confidentiality? Is this a mandated client or family system participating under a court order? Is therapy being weaponized for court rather than for securing the well-being of a parent or child? Are you being contacted by lawyers or hired experts asking for records or to speak with you with releases in hand from only one parent or threat of subpoena? From intake to termination, preparation to answer these types of questions may reduce ethics complaints, lawsuits, social media smears, threats, and serial harassment, all of which are contemporary professional risks (Warshak, 2016).

Although some aspects of forensic practice may be inapposite to clinical strategies for rapport and positive change, LMHPs working with family systems during child custody conflict (with or without an active case) may benefit from such a prophylactic framework (Greenberg & Gould, 2001; Greenberg & Shuman, 1997). At

least, it is argued, such a framework for clinical practice may reduce or mitigate risk to the LMHP and, derivatively, reduce harm to the child from the sudden termination of treatment or the misuse of confidential information as a trial strategy in court. P.A. is used as a template for exploring what may occur when a conceptual framework designed for fact finding in a trial is used to challenge the LMHP's clinical treatment of a child. This discussion does not mean discouraging new conceptual frameworks or research to help children, as that can and should be ethically accomplished (McDermott & Hatemi, 2020; Reamer, 2006). No one wants clinical interventions to be calcified when newly developed or refined methodologies have been ethically supervised and independently vetted and replicated with diverse and generalizable populations.

Proponents of the use of specialized knowledge and research in court (or any other host environment for that matter) who promise absolute certainty rather than relative probabilities of one future outcome over another violate 600 years of scientific ethics and principles (Bütz et al., 2009; Dror, 2009). The specialty of forensics, as defined by its long history in medicine, psychology, psychiatry, and social work, among other professional disciplines, is the act of rigorously applying scientific and policy knowledge to individuals living in organic and adaptive macro-systems. That act of agency (and power) requires critically analyzing and accurately translating specialized knowledge to family justice courts. Thus, the ethical duty to offer opinions within the scope of their knowledge and experience is itself an ethical obligation of forensic experts (Reamer, 2013).

In one recent study that has implications for this discussion, social work practitioners viewed knowledge as based “on a passive uptake, rather than active knowledge seeking” with the rationale of a lack of “initiative for practitioners” because of limited time and resources, a “different perspective on ‘knowledge,’” and “their own understanding of the role of a social worker” (Plafky, 2016, p. 1511). The concern is that passive uptake of knowledge may be hazardous with P.A. (and any existing or potential child custody litigation for that matter). This is important because transmuting conceptual frameworks, theories, or hypotheses is intended to minimize errors from unguided guesswork or reflexive decision-making when social science is used in court (Cashmore & Parkinson, 2014). After all, without intentional and explicit strategies and training from intake to termination, there is the potential for bias and orthodoxy, trumping intelligent and reflective observation (Dror, 2020; Scherr & Dror, 2021; Zapf & Dror, 2017).

Indeed, one of the inherent challenges when making research relevant and reliable to a chronic or high conflict family is bias drawn from conventional myths that “Mother Theresa does not marry Attila the Hun or that it takes two to tango” (Friedman, 2004, p.101). This bias, which can become a mantra in legal and mental health environments, requires sensitive observation and analysis to avoid tilting toward one parent's allocation of blame about the toxicity and duration of the litigation. When working with a child caught in child custody litigation, this heuristic of equivalency and fault, and the threat, subtle or not, of punishment if found blameworthy can impair a collaborative versus defensive clinical practice with potential harm to the client and the LMHP (Hecker & Murphy, 2015).

P.A. is the converse of ethical or even experimental treatment. P.A. is a *legal argument* intended to enhance the likelihood that a judge will find interference with the other parent's “rights” (see, for example, Tavares et al., 2021). With empathy for the

LMHP, Logan (2019) wrote that the “fog of parental alienation appears like a shroud cast over the most basic form of solidarity adhered to by healthy adults” with the risk that “children’s capacities will be eroded, and the social imagination will become more like *Lord of the Flies* than Peter Pan” (p. 111). The use of P.A. to potentially isolate children “with the court-ordered complicity in the confinement of children who have committed no wrongdoing would “appear to violate these children’s basic civil rights” (p. 111). As a result, supporting coercive and untested treatments for children may constitute a form of professional malpractice by the LMHP (Dallam & Silberg, 2016).

Children caught in child custody litigation are already vulnerable to such forms of dominance and exploitation within the court system as parents litigate physical and legal custody (Cole, 2012; Prescott, 2013; Prescott, 2007). The tension further arises between the rights of the vulnerable to withdraw from that treatment and the right to informed consent before releasing confidential information (National Association of Social Workers [NASW], 2017, 5.02(b), 5.02(i); Reamer, 2005). These tensions are particularly acute when there are dual relationships when working with family systems, marriage counseling, and parent–child reunification (Barsky, 2019; Brownlee et al., 2019), much less when an expert has a financial interest in giving an opinion or funneling child to a P.A. isolation program (Mercer, 2021).

Embedded in this challenge is ensuring that groups are not directly or indirectly harmed because of a lack of resources or power differentials when subject to institutional systems (NASW *Code of Ethics* 6.04(d), 2017; Walters & Hurst, 2020). Comparing the family court system to an experimental medicine context, for example, reveals the concern that exploitation and misrepresentation of research may harm vulnerable children (Yan & Munir, 2004). Preventing such a profound conundrum falls squarely within forensic codes and specialty guidelines, which require, at a minimum, thoughtful implementation of the following:

- explicit reliance upon detailed and stored record keeping strategies
- precise role identification (“stay in your lane”)
- application of reliable and generalizable scientific methodologies to that family
- precluding dual financial or personal relationships
- requiring transparent justification and sources for use of personality, actuarial, or cognitive testing or research
- avoiding human experimentation with untested or value-based opinions disconnected from multiple hypotheses and sources of data
- prompt consultation when unexpected dilemmas arise (APA, 2007; APA, 2010a; APA, 2010b; APA, 2012a; APA, 2012b).

APOPHENIA AS A CONCLUSION

In the research surrounding schizophrenia, there is a construct identified as *apophenia* (Blain et al., 2020). The term describes a core feature of psychosis when the client reports meaningful patterns in random events when none exist. This error, related to “the assignment of unwarranted salience to information in one’s environment” is what is generally referred to as Type I or false positives (p. 2). Apophenia is not the same as confirmation bias or poor forensic methodology and data collection. However, P.A. evidence is precisely the kind of expert evidence that may find patterns where none exist except through the *ipse dixit* of the proponent

(Gutheil & Bursztajn, 2003).

Family justice courts are staffed by many dedicated judges, lawyers, professionals, clerks, and security who spend careers trying to do their best. Still, they are charged with the logistics of processing massive volumes of child custody litigation subject to all the vagaries of human error and human emotion. They must enter judgments between the State and a private party (such as child protection and termination of parental rights) or between two private parties (allocation of the custody of a child, domestic abuse orders, or guardianships). Scholars have argued that the binary truth/untruth demands of this “modern adversarialism” system teaches people how to act toward each other, but that “the rhetoric and structure of adversarial discourse prevent[s] not just better and nicer behavior, but more accurate and open thinking” (Menkel-Meadow, 1996, p. 10). As designed, the family court system places unique pressures on litigants and professionals that may generate new tensions and further aggravate preexisting tensions (Sauer, 2007).

P.A. is not alone in the ethical and methodological influence on judges. More than a decade ago, the National Academy of Sciences studied the harm suffered by the wrongful conviction of poor and unprivileged in the United States by the admission of forensic sciences that were later proven to have little merit beyond the power of a degree or licensure (Edwards, 2010; National Research Council, 2009). What distinguishes P.A. from other orthodoxies brought to court as science is Mercer’s warning: “It is not necessary to declare P.A. concepts impossible in order to question the plausibility of these concepts as often applied” (p. 358). This potential for judicial reliance exists as grounds enough to recognize the need for early and preventive risk management when working with family systems and child custody conflict.

As previously emphasized, parents have engaged in weaponizing children and courts long before P.A. Those behaviors deserve to be treated for what they are: the psychic and emotional abuse of children. The privilege or wealth of parents should not allow for an escape from sanction for behaviors damaging to any child. Therefore, the old adage to hope for the best and prepare for the worst is not a wise approach to parental conflict and its intersection with family justice courts. Careful and methodical prevention is better than interventions like defending ethical complaints or lawsuits (Stanford, 2010). The apophenia that leads to false positives with P.A. is too difficult to stop once it enters the courtroom. Moreover, and of fundamental warning, relying upon lawyers and family court judges to prevent that harm ignores the structure and nature of the adversarial system at significant risk to the LMHP.

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