Parental Gatekeeping, Parental Alienation & Social Science in the Family Law Courtroom

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William G. Austin, M.S., Ph.D., Ph.D.
wgaustinphd2@yahoo.com
www.child-custody-services.com
www.parentalgatekeeping.com
www.socialscienceconsult-childcustody.com

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Roles in Family & Juvenile Court

- **PRE**
- **CFI**
- **Is the CFI an expert witness?**
- **Rebuttal Expert**
- **GAL**
- **CLR**

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Professional Standards & Guidelines

- Colorado Supreme Court Directive for CFI
- Child Custody: AFCC & APA
- Work Product Review of PRE & CFI
- Aspirational “Ceiling” or a “Floor” to assess quality of CFI?
- CFI “overmatched” by complex cases?

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Constructing a Helpful Mindset

- All litigated custody disputes are high conflict cases
- Legislative Declaration on continuing contact & care for both parents
- Best Interests factor VI is the gatekeeping factor
- Gatekeeping is at the center of every custody/parenting dispute

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Legal Context

- Legislative Declaration: continuing parent-child contact
- CRS 14-10-124(1)
- Support other parent-child relationship
- Gatekeeping factor
- CRA 14-10-124(1.5)(a)(VI)

Joint Parental Involvement Research

- Empirical Generalization very large literature
- Children of divorce show best long-term adjustment/outcomes when enjoy quality relationships with both parents
- 70 studies on benefits from shared parenting
- Shared parenting = minimum 35% timeshare (5/14 overnights)
- Scientific support for legislative declaration

Gatekeeping Relevant in every parenting dispute

- All child custody disputes involve an **impasse** over how to share involvement with & parental responsibilities for the child
- Every custody dispute reflects **Dysfunctional Coparenting**

Absence of General Framework

- There is no organizing-integrative theoretical-conceptual framework to guide professionals & courts based on social science
- Remember expert testimony requires a scientific foundation for procedures and substantive knowledge
- Factorial Analysis guides rational assessment
- Solutions require a practical analysis

Social Capital 1

- Social capital (SC) refers to the psychosocial resources that available from the important relationships in the child's life in a particular environment. A child's family environment and its extensions can vary greatly in the quality as a function of the breadth and depth of resources available. Positive Social Capital (PSC) represents the net SC available to the child. Negative Social Capital (NSC) refers to the potential effects of aversive variables associated with a host environment for the child.
- Social Capital analysis lessens the emphasis on identifying a "best parent."

Social Capital 2

- One parent in particular may bring NSC and associated risks. Examples would be substance abuse, deficient parenting skills, harsh parenting/abuse. Restrictive gatekeeping (e.g., difficulty in sharing the child) and parent alienating behaviors would also be examples of NSC. With this perspective, the decision-maker/judge or evaluator can step back and try to identify the “assets and liabilities” associated with the primary caregivers in each alternative environment. This psychological calculus hopefully can provide a more objective and rational approach for the conclusions and opinions.

Social Capital 3

- Social Capital represents a general social science construct to **explain** children's outcomes as a function of their ecological environment.
- Parental Gatekeeping represents a general social science construct to **describe** parental influence, regulation, and control over the flow of resources to the child.

Complex Issues in Parenting Disputes

- Intimate Partner Violence (IPV)
- Relocation
- Parental Gatekeeping & Parent Alienating Behaviors (PABs)
- Resist & Refusal Behaviors
- Child Sexual Abuse (CSA) allegations

Systematic Approach to Complex Issues

- Use of Social Science Information & Knowledge (SSI-K)
- Responsible use of social science concepts & theory
- Social Science-Based Forensic Analytical Models
- Decision Tree schematics

Parental Gatekeeping

- **Definition**

- Gatekeeping is defined as the verbal and action behaviors by each parent that are expected to affect the involvement and quality of the relationship between the other parent and child, either positively or negatively.

Gatekeeping Attitudes vs. Behaviors

- RG attitudes are normative among custody litigants
- Child outcomes more affected by parental gatekeeping behaviors
- Parents need to learn to **compartmentalize** negative attitudes from co-parenting behaviors (Whiteside, 1998)
- A Parent can be supportive of other parent-child relationship and still advocate for RG (overnights, mental illness of other parent)
- It is important to distinguish between gatekeeping attitudes and behaviors.

Continuum of Gatekeeping Attitudes and Behaviors

* Very Facilitative

(i.e. Proactive toward other parent, ongoing efforts to communicate, flexible time-sharing)

* Cooperative
* Disengaged
* Restrictive
* Very Restrictive

(i.e. Blocks attempts at engagement, refuses to communicate, blocks time-sharing, severe child alienation)

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Understanding Gatekeeping Terms & Acronyms

- ❖Restrictive Gatekeeping (RG)
- ❖Facilitative Gatekeeping (FG)
- ❖Protective Gatekeeping (PG)
- ❖Justified Restrictive Gatekeeping (JRG)
- ❖Unjustified Restrictive Gatekeeping (URG)
- ❖Justifiability Analysis
- ❖Parent Alienating Behaviors (PABs)

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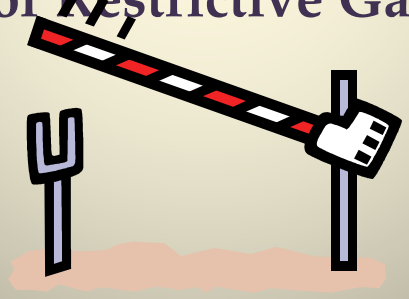
Typology in Gatekeeping

Gate Opening = Facilitative Gatekeeping (FG)
Gate Closing=Restrictive Gatekeeping (RG)

Protective Gatekeeping (PG) =
Reasons for Restrictive Gatekeeping



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Gatekeeping Continuum: Attitudes & Behaviors

Very Facilitative
(i.e. Proactive toward other parent, ongoing efforts to communicate, flexible time-sharing)
Cooperative
Disengaged
Restrictive
Very Restrictive
(i.e. Blocks attempts at engagement, refuses to communicate, blocks time-sharing, severe child alienation)

Gatekeeping and Alienation

- Gatekeeping as the more general concept
- Parent Alienating Behaviors as Unjustified Restrictive Gatekeeping
- Expect to see disturbed parent-child relationship dynamics in alienation

Gatekeeping Hypotheses

- **FG more likely to produce better child adjustment through higher involvement of both parents and less exposure to parent conflict**
- **RG more likely to produce lower child adjustment by producing more conflict and harm to the quality of other parent-child relationship**

Restrictive Gatekeeping (RG) = Gate closing

- **Actions by a parent that are intended to interfere with the other parent's involvement with the child and would predictably negatively affect their relationship**
- **More common following separation and divorce**

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Gatekeeping: Secondary Effects

- Affects the quality of the co-parenting relationship, either positively or negatively
- Cooperative co-parenting & less conflict positively impacts the child's well-being (Hetherington, 1999; King & Sobolewski, 2006)

Dangers of Analysis by Labeling

- Need for Behavioral Specificity
- See “Bench Book” article for behavioral examples
- See “Bench Card”
- “Gate-Closing” Behaviors (RG)
- “Gate-Opening” Behaviors (FG)

Gatekeeping Attitudes vs. Behaviors

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Gate Open or Gate Closed?

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Facilitative Gatekeeping: Gate Opening

Facilitative Gatekeeping (FG) occurs when a parent acts to support the continuing involvement by the other parent and maintenance of a meaningful relationship with the child. FG demonstrates that parent values the contributions of other parent.

Examples of Gate-Closing Behaviors (RG)

- Not permitting child to have photographs of other parent
- Asking child to keep secrets from the other parent
- Asking child for personal information about other parent
- Withholding information about the child
- Not placing other parent's name as parent on school/doctor forms

RG appears in many forms

- Information Control/Blackout: Micro-managing
- Inflexibility on Parenting Time
- Derogating Other Parent
- Vindictive-Anger Driven
- Reflecting Personality Disorder, Delusional
- Post-Separation Transition-Based & Associated with Parental Identity Angst
- Overnights Dispute

Protective Gatekeeping: Definition

Attitudes, actions, and/or legal position designed to limit the other parent's access, contact, or involvement with child based on stated reasons that parenting time and involvement places the child at risk for harm, emotional distress, behavioral problems, adjustment difficulties, or negative developmental impact.

Common Reasons for Protective Gatekeeping

- Perceived Parental Incompetence
- Past IPV
- Major Mental Disorder
- Substance/Alcohol Abuse
- Harsh Parenting/Child Abuse
- Allegations of Child Sexual Abuse
- Age of Child (Overnights issue)

Protective Gatekeeping: Justification Analysis

- Alleging Parent has done “Implicit Risk Assessment”
- Do facts, context, circumstances & professional literature agree with alleging parent’s risk assessment?
- Restrictive, Protective Parent needs to identify with specificity the actual potential harm

Opportunistic Gatekeeping

- Opportunistic Gatekeeping (OJRG or OUJRGG or OFG) refers to how parents respond to very significant situations or environmental circumstances that present the opportunity for a parent to act in a manner to support the other parent-child relationship despite misconduct by the other parent. Or, the parent takes advantage of the other parent's behaviors and situation (predicament?) so as to not support the other parent-child relationship and act to restrict access to the child.

Gatekeeping by Allegation

- Adapt justification analysis to specific type of case:
  - Intimate Partner Violence
  - Little written about IPV in relocation context
  - Child Sexual Abuse
  - The "True Believer" in CSA cases
  - Allege harsh parenting
  - Alienation cases

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Justification Analysis

- Logical Protocol for Investigation and Analysis
- Identify the issue and state reasons for concerns about *potential risk of harm*
- What observed/expected effects on child create concerns?
- Investigate the perspective of the party making the case against the allegation
- Systematically assess credibility (Austin, 2000)
- State the facts with behavioral specificity
- Determine actual level of risk and whether or not gatekeeping is justified

Does Relocation Represent RG?

- Relocation & Long Distance alters Quality of Parent-Child Relationships
- Ways to manage, contain, mitigate potential harm to parent-child relationship
- Moving Parent needs to justify relocation and balancing of potential harm with potential benefits
- Concept of Least Detrimental Alternative
- Austin & Rappaport (2018)

Gatekeeping & Overnights

- Current Controversy; Conundrum
- Different Schools of Thought
- Primary Attachment-based v Shared Parenting/Social Capital-based
- Risk of harm for father overnights?
- Restrictive view: Exclusivity
- Facilitative view: Inclusivity
- Austin (2018)

Gatekeeping by Agency

- Allegations/complaints of child abuse and/or neglect
- Child Protective Services investigation: substantiate allegations, concerns
- Parent's access to child is limited, supervised
- Termination of Parental Rights (TPR) as ultimate in Justified Restrictive Gatekeeping

Gatekeeping by Evaluator/Investigator

- By Child Custody Evaluator's recommendations
- Conditional Gatekeeping: tied to Interventions: therapy, alcohol monitoring, supervised parenting time
- Court decides if evaluator's recommended restrictiveness on access is justified

Gatekeeping by Therapists

- Therapists going to where they do not belong
- Ethical quicksand to get involved in parenting time/custody/relocation issues
- Courts put therapists in position of gatekeepers
- Egregious examples in CSA cases

Gatekeeping and Alienation

Gatekeeping & Alienation

- **Substantial & Enduring RG may represent Alienation & PABs**
- **Using Gatekeeping Model to explain harm associated with alienation**
- **Alienating Parent will try to Justify the restrictivness, not supporting other parent**
- **Conceptual Synthesis & Differentiation**

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Conceptual Synthesis & Differentiation

- Severe Alienating Behaviors fall at negative end of the Gatekeeping Continuum
- Parent Alienating Behaviors (PABs)
- PABs are behaviors that create the "conspicuous expectation" of resulting in harm in the other parent-child relationship
- PABs are enduring patterns

Austin & Pruett, 2014

Alienation situations represent a qualitatively distinct set of family system dynamics from most restrictive gatekeeping scenarios RE: the parent-child dynamics and level of psychopathology present

Austin & Pruett, 2014

Alienation cases & Protective Gatekeeping

- Alienation cases usually present in context of allegations and Protective Gatekeeping
- Calls for justification analysis analysis
- It is Alienation if confirmed as Unjustified Restrictive-Protective Gatekeeping

Alienation as Unjustified RG

- Alienating Behaviors by a Parent inhibit the child's access to the social capital of the other parent
- Alienated Child is refusing the rejected parent's psychosocial resources
- Alienating parent does not perceive value in the other parent's contributions to the child

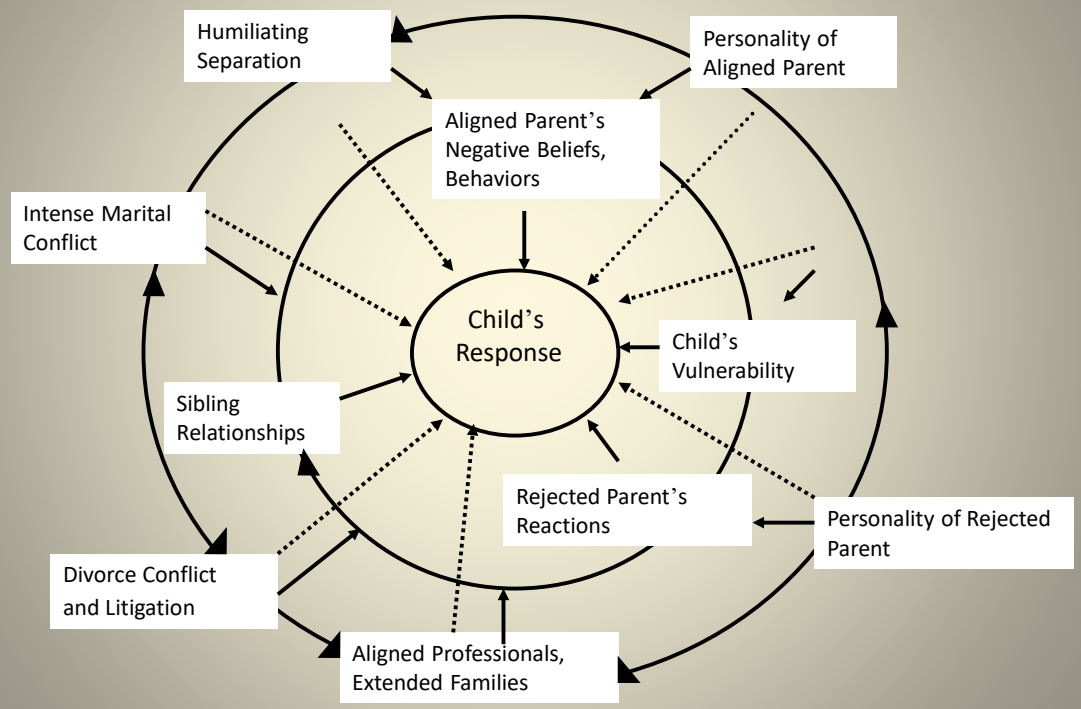
Austin & Pruett, 2014

All PABs represent Unjustified Restrictive Gatekeeping

Most Unjustified Restrictive Gatekeeping is not alienation

Austin & Pruett, 2014

Kelly & Johnston's Multi-Factorial Model of Alienation



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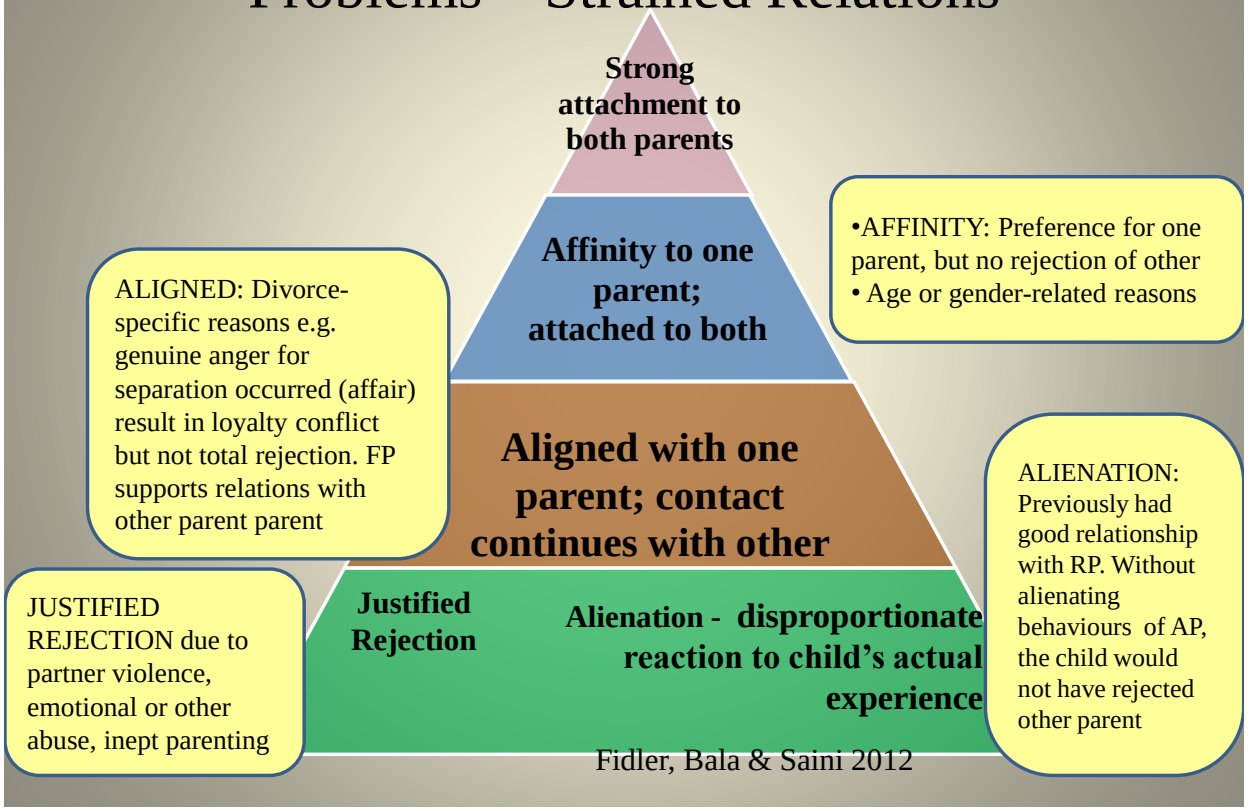
Different Types of Parent-Child Contact Problems – Strained Relations



Fidler, Bala & Saini 2012

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Review Alienation Literature

- Among the 39 alienation studies located & evaluated:
  - none were scored as high quality
  - 18% were of moderate quality
  - 43% were of low quality
  - 39% were of very low quality

- Questions remain about severity, duration, consequences, court interventions, etc.

Saini, Johnston, Fidler, & Bala, 2012

Triadic Analysis Framework

- Kelly & Johnson (2001)
- Behaviors of both parents & child
- Alienated Child analysis
- Consistent with new approach on Resistance & Refusal

New Framework: Resistance & Refusal

- Move away from labeling
- Behavioral emphasis
- Starting point is the child's resistance & refusal to have contact behaviors
- Realistic estrangement analysis
- Calls for appropriate forensic investigation on facts & context
- Is extreme parental alienation legal emotional abuse?

Interventions for the Resistance & Refusal Case

- When alienated and/or aligned child
- When fact-finder disagrees with alienating parent's "risk assessment"
- "Ruptured parent-child relationships"
- "Mandated gate-opening behaviors" ordered by the court
- Consider suspending contact between alienated child and alienating parent

How to Unlock the Mindlessness in the Alienating Parent?

- True believer that the alienating behaviors are necessary to protect the child.
- Example of allegations of CSA that cannot be confirmed/supported
- When past IPV and parent cannot see value for the child by contact with the harm-doer ex-partner