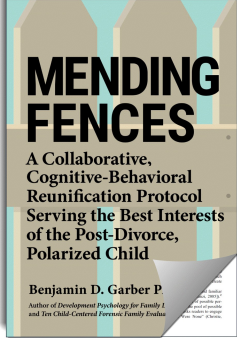


Garber, B.D., Prescott, D., and Mulchay, C. (2022). The family law professional's field guide to high conflict litigation: Dynamics, not diagnoses. American Bar Association.

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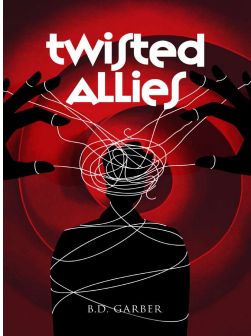
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Garber, B.D. (2021). Mending Fences: A collaborative, cognitive-behavioral "reunification" protocol serving the best interests of the post-divorce, polarized child. Unhooked Media.

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3



Shameless self promotion

Don't pretend that the lines between reality and fiction, between protecting and abusing between what is just and what is necessary, ever were clear.

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Wisconsin
Juvenile/Juvenile
Committee on Children

Anxiety, Structure,
and Resist/Refuse Dynamics
Concepts and Practical Answers
in Contemporary Family Law
April 23-24, 2026
Baraboo, Wisconsin

Part 1: Setting the stage

Benjamin D. Garber, Ph.D.
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FamilyLawConsulting.org DEFUSEdivorce.com

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5

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

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Caveat lector

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

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7

 **Ethics and boundaries**

PROFESSIONAL COMPETENCE AND INTEGRITY
Marriage and family therapists maintain high standards of professional competence and integrity.

3.1 Maintenance of Competency.
 Marriage and family therapists pursue knowledge of new developments and maintain their competence in marriage and family therapy through education, training, and/or supervised experience.

3.10 Scope of Competence.
 Marriage and family therapists do not diagnose, treat, or advise on problems outside the recognized boundaries of their competencies.

7.1 Performance of Forensic Services.
 Marriage and family therapists may perform forensic services which may include interviews, consultations, evaluations, reports, and assessments both formal and informal, in keeping with applicable laws and competencies.

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https://www.aamft.org/AAMFT/About/EthicsCode_of_Ethics.aspx

8

Caveat lector

MPSW 19.02 Continuing education requirements.

(1) Unless granted a postponement or waiver of the continuing education requirement under s. MPSW 19.04, every marriage and family therapist, professional counselor, social worker, advanced practice social worker, independent social worker, and clinical social worker shall complete at least 30 continuing education credit hours in approved continuing education programs during each 2-year credential period and certify on the application for renewal that all required education was completed. Unless granted a postponement or waiver of the continuing education requirement, a credential holder who fails to meet the continuing education requirements by the renewal deadline must discontinue the use of the title.

(2) A minimum of 4 continuing education credit hours, of the required 30 continuing education credit hours, shall be in the area of professional ethics and boundaries related to the practice of marriage and family therapy, professional counseling, or social work.

(a) A person holding multiple credentials granted by the board shall complete only a minimum of 4 continuing education credit hours in the area of professional ethics and boundaries.

(b) Social work credential holders shall complete their ethics continuing education credit hours in an interactive learning format.

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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.



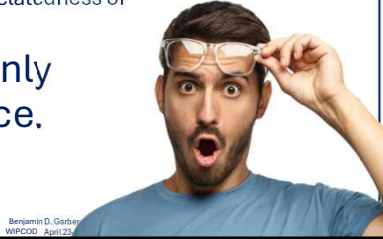
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Caveat lector

- ❖ 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.



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Caveat lector

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



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Ethics and boundaries

GUIDELINE 6

Psychologists conducting child custody evaluations strive to engage in culturally competent practice.

American Psychological Association. (2022). *Guidelines for child custody evaluations in family law proceedings*.

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Ethics and boundaries

“... when conducting examinations, interpreting data, and formulating opinions, psychologists consider how **the structure and functions of diverse families may differ from cultural stereotypes**, especially in areas such as attachment, parenting attitudes, child development, child and partner abuse, family functioning, childrearing practices, gender role including caregiving roles, and disability in children.”

American Psychological Association. (2022). *Guidelines for child custody evaluations in family law proceedings*.

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Ethics and boundaries

E.5.b. Cultural Sensitivity.

“Counselors recognize that culture affects the manner in which clients’ problems are defined and experienced. Clients’ socioeconomic and cultural experiences are considered when diagnosing mental disorders.”

American Counseling Association. (2014). 2014 ACA code of ethics. Retrieved from ACA.

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15

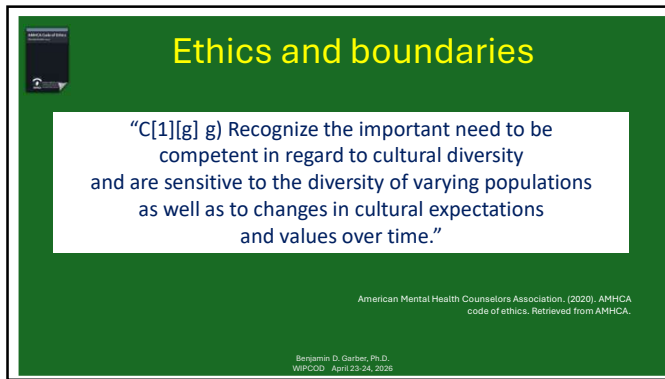
Ethics and boundaries

“1.05 Cultural Awareness and Social Diversity.
(a) Social workers should understand culture
(b) and its function in human behavior and society,
recognizing the strengths that exist in all cultures..”

National Association of Social Workers. (2017). Code of ethics of the National Association of Social Workers. Retrieved from NASW.

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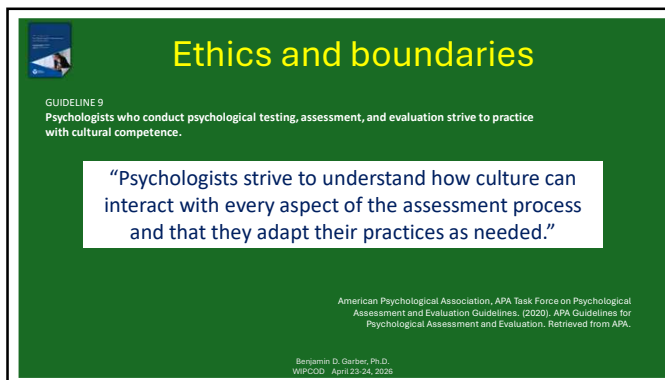
Ethics and boundaries

“C[1][g] g) Recognize the important need to be competent in regard to cultural diversity and are sensitive to the diversity of varying populations as well as to changes in cultural expectations and values over time.”

American Mental Health Counselors Association. (2020). AMHCA code of ethics. Retrieved from AMHCA.

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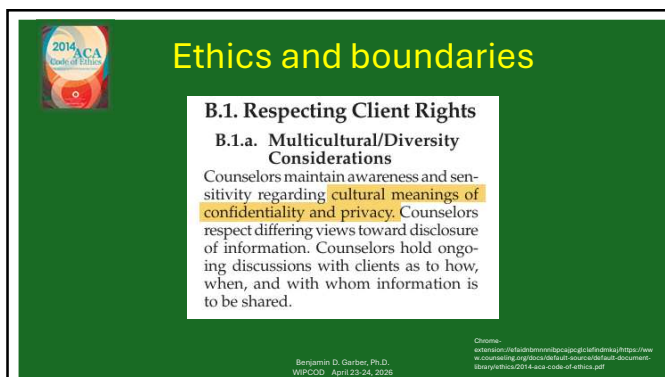
GUIDELINE 9
Psychologists who conduct psychological testing, assessment, and evaluation strive to practice with cultural competence.

“Psychologists strive to understand how culture can interact with every aspect of the assessment process and that they adapt their practices as needed.”

American Psychological Association, APA Task Force on Psychological Assessment and Evaluation Guidelines. (2020). APA Guidelines for Psychological Assessment and Evaluation. Retrieved from APA.

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Ethics and boundaries

B.1. Respecting Client Rights
B.1.a. Multicultural/Diversity Considerations
Counselors maintain awareness and sensitivity regarding cultural meanings of confidentiality and privacy. Counselors respect differing views toward disclosure of information. Counselors hold ongoing discussions with clients as to how, when, and with whom information is to be shared.

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Chrome: extension://fscdmmnmbpajpgic/sfndmsa/https://www.counseling.org/docs/default-source/default-document-library/2014-aca-code-of-ethics.pdf

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Ethics and boundaries

[Curiously, the AAMFT code of ethics does not acknowledge cultural differences]

American Association for Marriage and Family Therapy. (2015). AAMFT code of ethics. Retrieved from AAMFT.

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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.

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Middle, NH 03045

Developmentally-aware, systemically-informed, child-centered expert psychological services.

Dr. Ben Garber is a New Hampshire licensed, PsyPhd-qualified psychologist.

Dr. Garber's long-standing commitment is to help parents, schools, agencies and the courts to better understand and serve the needs of children.

Dr. Garber's practice is limited to Court-related (i.e., forensic) services including individual and family system evaluations, peer consultation and supervision, work-product review, attorney consultation, and educating the court in the role of expert witness.

Family Law Training

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.

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23

There's a lot we don't know.

“We have no consensual baseline defining how family systems function best, and yet we presume to advise the courts which relationships are healthier than others.”



Garber, B. D. (2023). The emperor has no clothes: A systematic view of the status and future of child custody evaluation (CCE), Family Court Review, 1-15.

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But we do have some bits and pieces



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18 things we think that we know

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1

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We often don't know
what we don't know.

It ain't what you don't know
that gets you into trouble.
It's what you know for sure
that just ain't so.

Mark Twain

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www.thequotes.in

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This demands
humility
in all things.

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Keep me away from
the wisdom that does not cry,
the philosophy which does not laugh,
and the greatness which does not
bow before children.

Khalil Gibran

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We cannot predict the future.



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We often assume that
**the best predictor
 of the future
 is the past,**
 but how accurately
 are we able to understand the past?

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How
ecologically valid
 are our observations?

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Ecological validity
asks how representative a
sample is of reality

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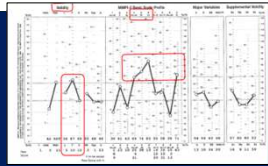
Children are different from adults.



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Individuals have
relative strengths and weaknesses.
We can measure some of these.



Patterns of strengths and
weaknesses within a person
that we deem pathological
are called
diagnoses.

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Each individual's needs and
abilities change over the course of
development.



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This means that we are
aiming at a moving target.



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How valid is your PPE
when its finally entered into
evidence nine months later?



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Everyone needs to be
emotionally refueled.



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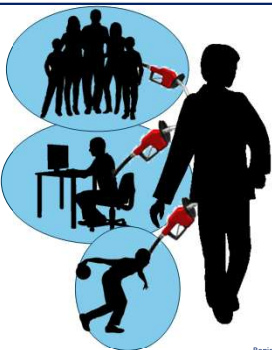
Are you a
Hummer or a Prius?



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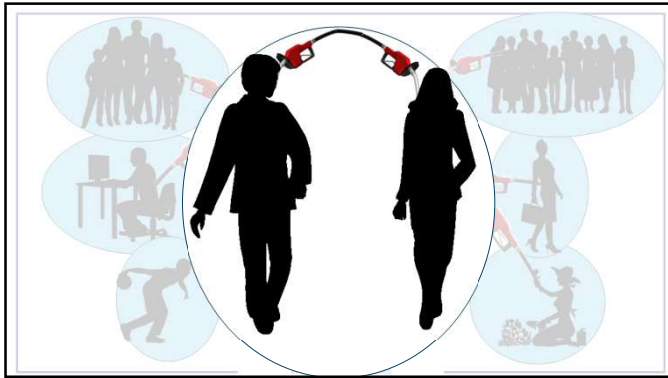
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The number and variety
of relationships in an
individual's life is
related to **resilience**.



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AFCCnet.org/Webinars

Understanding conflicted family systems through a developmental lens

“How do I get refueled?”



AFCC Webinar 11.19.2014 Benjamin Garber, PhD. OurFamilyWizard AFCC

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GUIDELINE 9
Psychologists who conduct psychological testing, assessment, and evaluation strive to practice with cultural competence.

“Psychologists strive to understand how culture can interact with every aspect of the assessment process and that they adapt their practices as needed.”

American Psychological Association, APA Task Force on Psychological Assessment and Evaluation Guidelines. (2020). APA Guidelines for Psychological Assessment and Evaluation. Retrieved from APA.

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1.3 Multiple Relationships.
Marriage and family therapists are aware of their influential positions with respect to clients, and they avoid exploiting the trust and dependency of such persons. Therapists, therefore, make every effort to avoid conditions and multiple relationships with clients that could impair professional judgment or increase the risk of exploitation. Such relationships include, but are not limited to, business or close personal relationships with a client or the client's immediate family. When the risk of impairment or exploitation exists due to conditions or multiple roles, therapists document the appropriate precautions taken.

1.4 Sexual Intimacy with Current Clients and Others.
Sexual intimacy with current clients or with known members of the client's family system is prohibited.

1.7 Abuse of the Therapeutic Relationship.
Marriage and family therapists do not abuse their power in therapeutic relationships.

https://www.aamft.org/AAMFT/Legal_Ethics/Code_of_Ethics.aspx

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Everyone is biased
(including us).



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Selective Attention Test
from Simons & Chabris (1999)

Instructions
Count how many times the
players wearing white pass
the basketball.



Priming
biases our perceptions



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Selective Attention Test
from Garber (2016)

Instructions
Assess alienation
in this family group

Priming
biases our perceptions

Blind to estrangement?

Blind to autism?

Blind to estrangement?

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**“... pre-judgment expectations
can indeed influence interrogators,
jurors, judges, eyewitnesses,
and experts in
a range of forensic domains”**

Kassin, S. H., Dror, I. E., & Kukucka, J. (2013). The forensic confirmation bias: Problems, perspectives, and proposed solutions. *Journal of Applied Research in Memory and Cognition*, 2(1), 42-52.

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**“... the tendency to
seek data that supports
one's hypotheses about a family
while neglecting
to seek disconfirming information.”**

Wittman, J. (March, 2017). Bias in custody evaluations.
The Matrimonial Strategist. Accessed 12.27.2018

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“... clinicians who
initially suspect estrangement
are likely to show
confirmation bias in favor of estrangement;
those who initially suspect alienation
are likely to show confirmation bias
in favor of alienation.”

Miller, S. G. (2013). Clinical reasoning and decision-making in cases of child alignment: Diagnostic and therapeutic issues. In A. J. L. Baker & S. R. Sauber (Eds.), *Working with alienated children and families: A clinical guidebook* (pp. 8-46). New York, NY, US: Routledge/Taylor & Francis Group.

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“mental health professionals ...
must approach each family
the way that Holmes approached each case,
without a presumed suspect,
moving systematically from detail to hypothesis,
well-versed in the full range of dynamics
that may be at play,
and erring in favor of parsimony
rather than pathology.”

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.

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“... remain constantly vigilant
for any information
that may contradict your existing [hypothesis],
and to give any such information
careful consideration,
rather than dismissing it as irrelevant.”

Klein J. G. (2005). Five pitfalls in decisions about diagnosis and prescribing. *British Medical Journal* (Clinical research ed.), 330(7494), 781-3.

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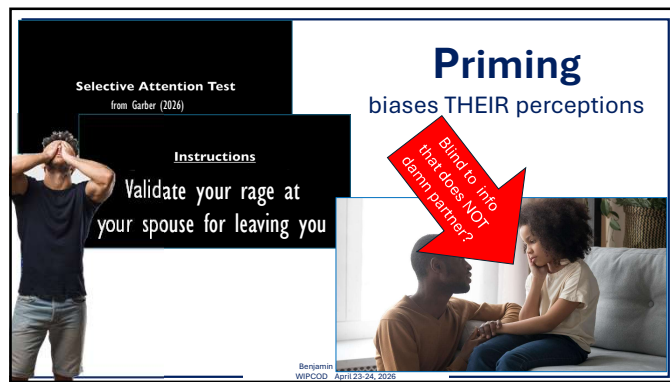
64

“... remain open-minded
throughout the process
and even
aggressively search for data
which is disparate
from predominant analyses of the case.”

Pickar, D. B. (2007). On being a child custody evaluator: Professional and personal challenges, risks, and rewards. *Family Court Review*, 45, 103-115.

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Selective Attention Test
from Garber (2026)

Instructions
Validate your rage at
your spouse for leaving you

Priming
biases THEIR perceptions

Blind to info
that does NOT
damn partner?

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Rage, shame,
embarrassment and fear
(and the urging of advocates)
biases perceptions and
motivates premature
validation of
ego-syntonic perceptions,
e.g., he rejected me,
therefore he must be evil.

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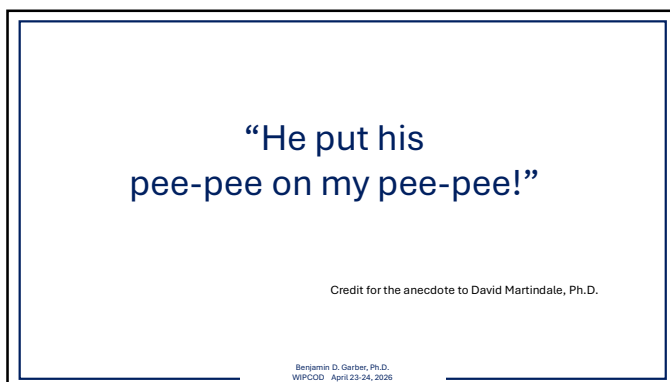
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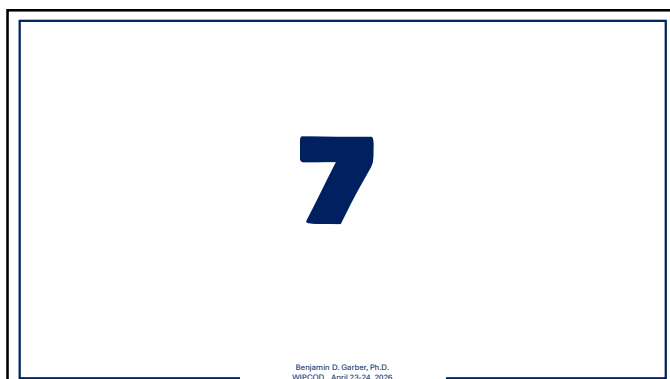
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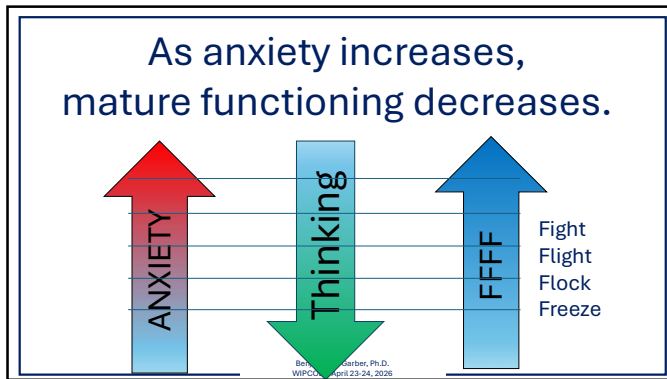
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“...[PPEs] presume to draw generalizations about families seen at the worst of times: when they are rubbed raw by the enormous social, emotional, and financial pressures of conflicted custody litigation, and then asked to put on their Sunday best to impress an unfamiliar professional whose opinions are likely to shape the rest of their lives.”

Garber, B. D. (2023). The emperor has no clothes: A systematic view of the status and future of child custody evaluation (CCE). *Family Court Review*, 1-15, p. 749

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Individuals who have at least
one constant emotional anchor
 can survive even
 the worst of trauma.



Garber, B.D. & Prescott, D.E. (2020). On the value of Teddy bears and Barbie dolls: The place of children's transitional objects in family law. *Southwestern Law Review*, 49.

Garber, B.D. (2019). For the love of Fluffy: Respecting, protecting, and empowering transitional objects in the context of high conflict divorce. *Journal of Divorce and Remarriage*, 60(7), 552-565.

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“Psychotherapy may provide a
‘port in the storm’
 for children triangulated
 into their parents' conflicts,
 but can only do so to the extent that
 the psychotherapy itself
 avoids becoming similarly triangulated.”

Garber, B. D. (2013). Providing effective, systemically informed, child-centered psychotherapies for children of divorce: Walking on thin ice. In A. J. L. Baker & S. R. Sauber (Eds.), *Working with alienated children and families: A clinical guidebook* (pp. 166-187). Routledge/Taylor & Francis Group.

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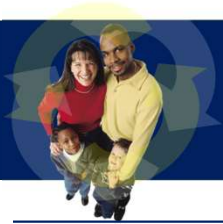
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People function and grow within
nested relationship systems.

Patterns of thoughts, feelings
and/or behaviors that
characterize a relationship
are called **dynamics**.



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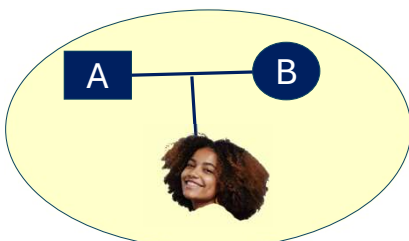
80

Family law
asks questions about
dynamics, not diagnoses.

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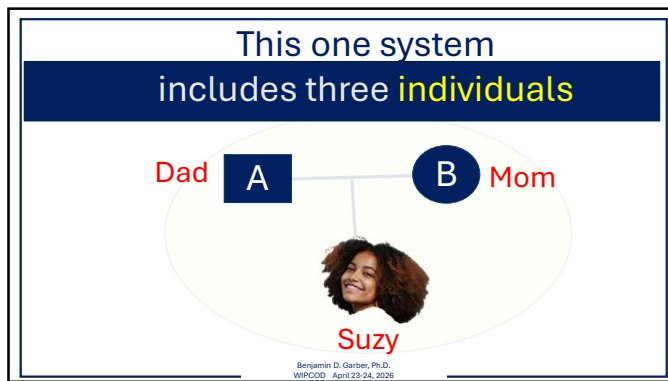
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A simple family system

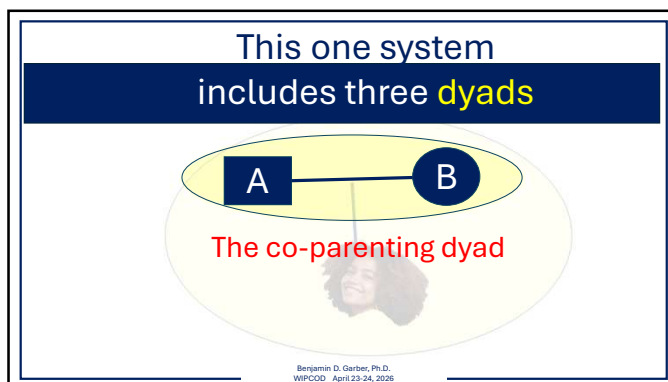


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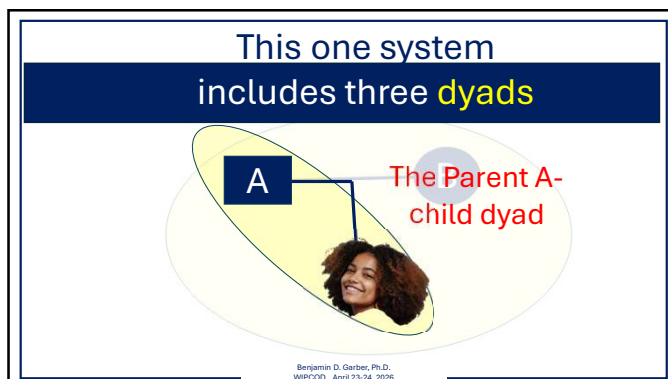
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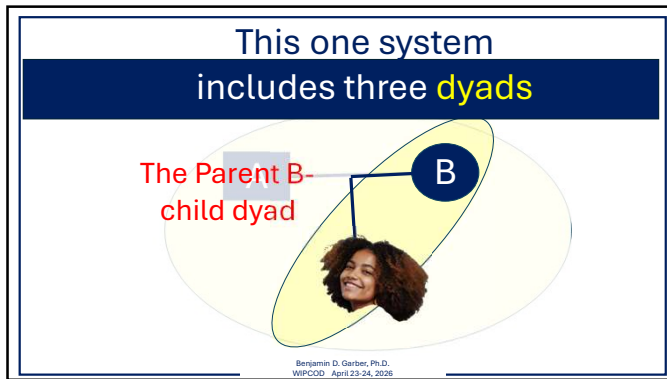
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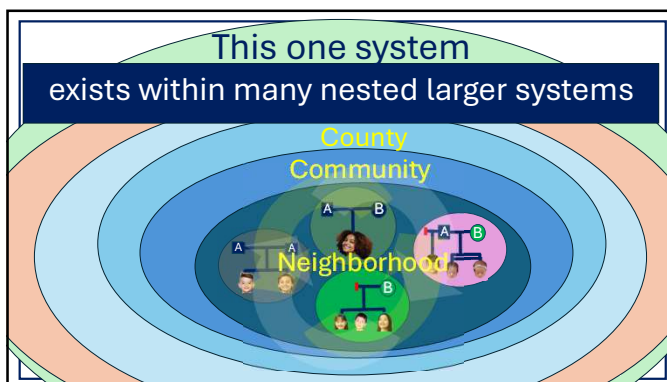
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Our thinking is linear.



Systems are not.

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Linear means that effect
follows an identifiable cause.



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Linear thinking forces the spectrum of experience into **binary** black v. white



If/then
Cause/effect
Guilt/innocence
Victim/perpetrator
Good guy/bad guy



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**Binary thinking
seldom applies in family law**



Black/white
All/nothing
Either/or

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“Who started it?”

is binary.

It presumes a linear chain of events and a single bad guy.

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“Who started it?”

is critically important in criminal matters

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“Who started it?”

is exactly the wrong question in family law

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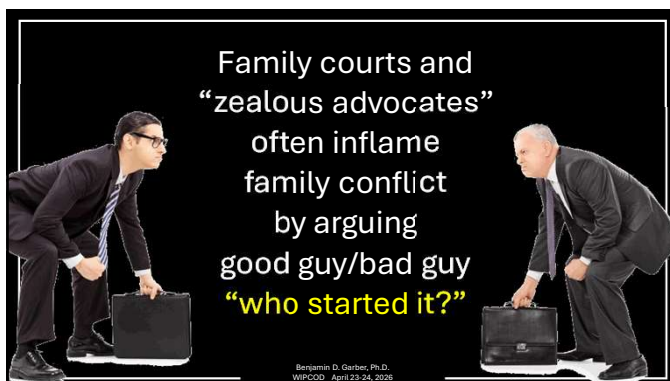
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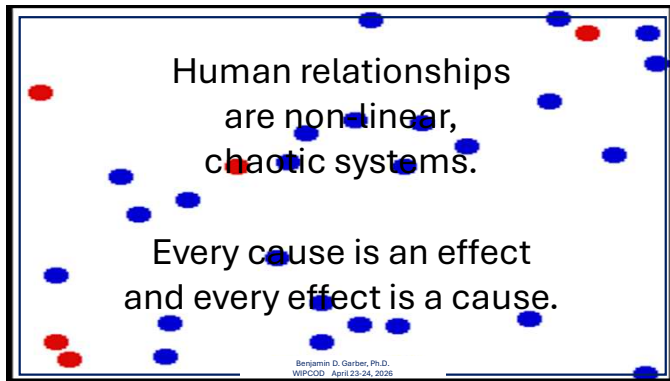
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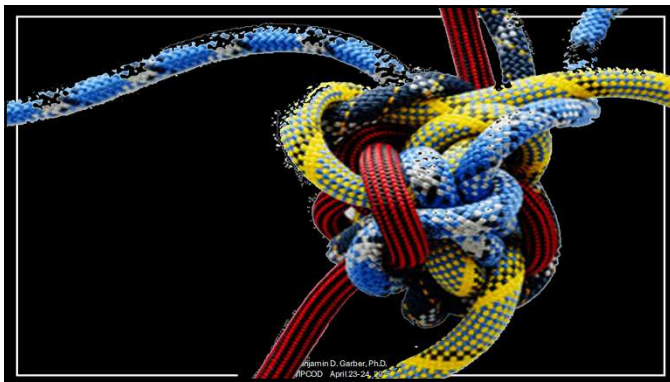
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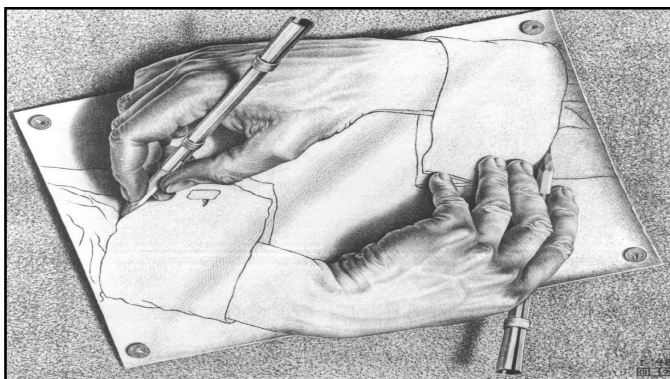
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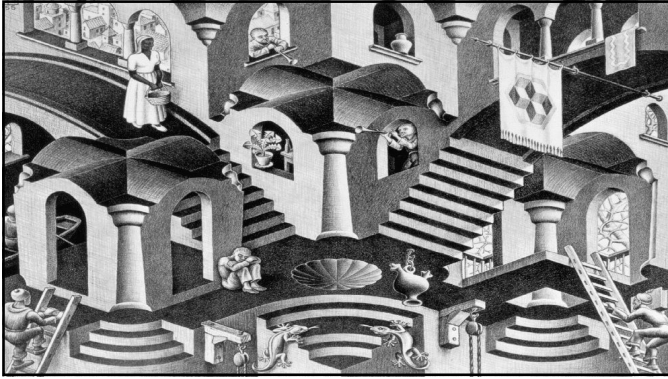
101



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We risk
doing harm
by forcing
family systems
into linear
models.



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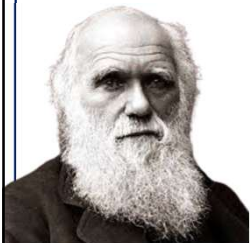
107

11

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Systems adapt to their ecology
in order to survive.



"It is not the strongest of the
species that survives, nor the most
intelligent that survives. It is the one
that is most adaptable to change."

Charles Darwin
(1809 - 1882)

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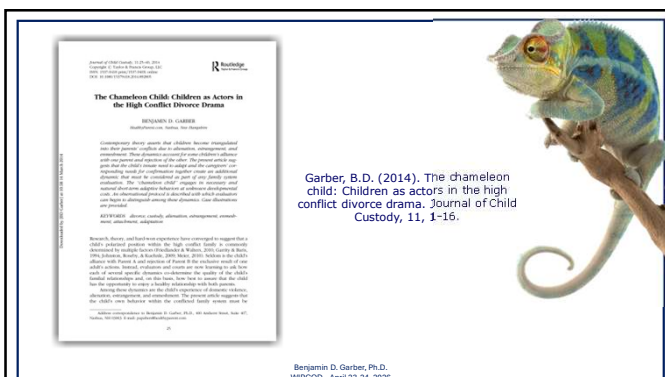
112



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“Fit” is good.



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Guidelines for Child Custody Evaluations in Family Law Proceedings

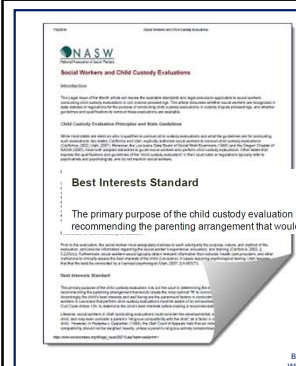
Introduction
The purpose of this document is to provide guidelines for child custody evaluations in family law proceedings. It is intended to be used by mental health professionals who are qualified to conduct such evaluations. The guidelines are based on the best available research and clinical practice. The purpose of this document is to provide guidelines for child custody evaluations in family law proceedings. It is intended to be used by mental health professionals who are qualified to conduct such evaluations. The guidelines are based on the best available research and clinical practice.

3. The evaluation focuses upon parenting attributes, the child's psychological needs, and the resulting fit.

The American Psychological Association

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Social Workers and Child Custody Evaluations

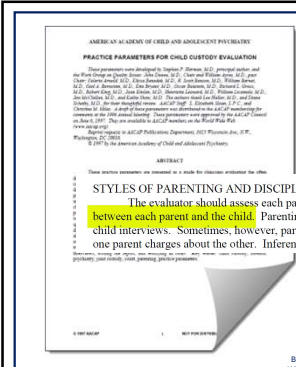
Best Interests Standard

The primary purpose of the child custody evaluation is to aid the court in determining the best interests of the child by recommending the parenting arrangement that would create **the most optimal "fit" to coincide with the child's best interests.**

The National Association of Social Workers

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AMERICAN ACADEMY OF CHILD AND ADOLESCENT PSYCHIATRY

PRACTICE PARAMETERS FOR CHILD CUSTODY EVALUATION

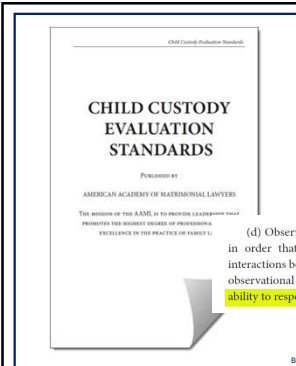
STYLES OF PARENTING AND DISCIPLINE

The evaluator should assess each parent's parenting style to see **how good a fit there is between each parent and the child.** Parenting styles may become obvious during the joint parent-child interviews. Sometimes, however, parenting style is difficult to assess except through what one parent charges about the other. Inferences should be fully explored whenever possible.

The American Academy of Child and Adolescent Psychiatry

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CHILD CUSTODY EVALUATION STANDARDS

The American Academy of Matrimonial Lawyers

(d) Observations of parents with children should be conducted in order that the custody evaluator may view samples of the interactions between and among the children and parents, to obtain observational data reflecting on parenting skills and on **each parent's ability to respond to the children's needs.**

The American Academy of Matrimonial Lawyers

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We don't know what "fit" means
or how to measure it.



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Or what to do with "fit" in one
domain but not in others



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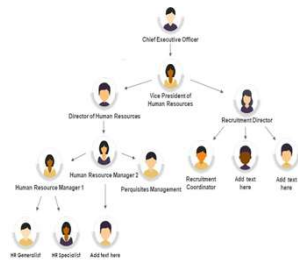
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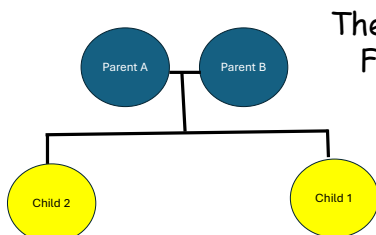
Systems must be understood in terms of the **hierarchical distribution of resources** including power and control.



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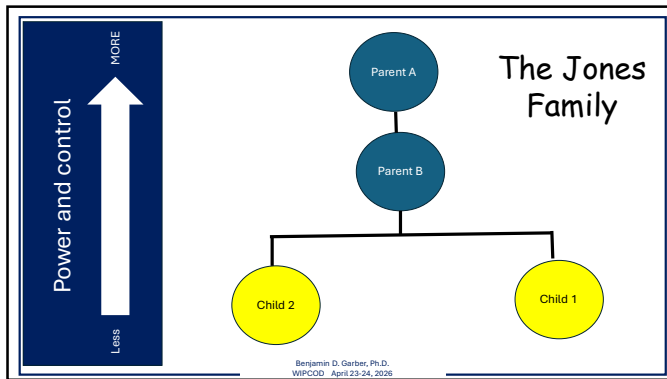
Power and control
↑
MORE
LESS



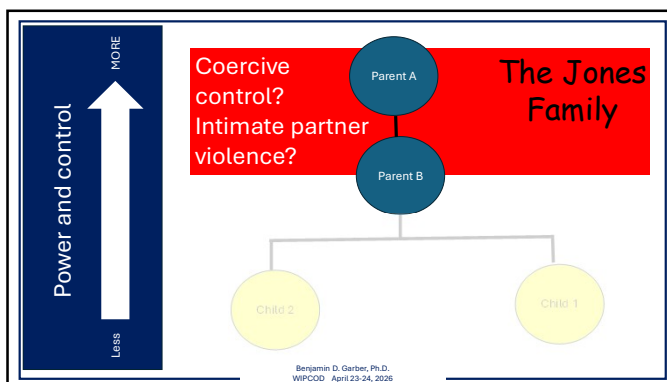
The Smith Family

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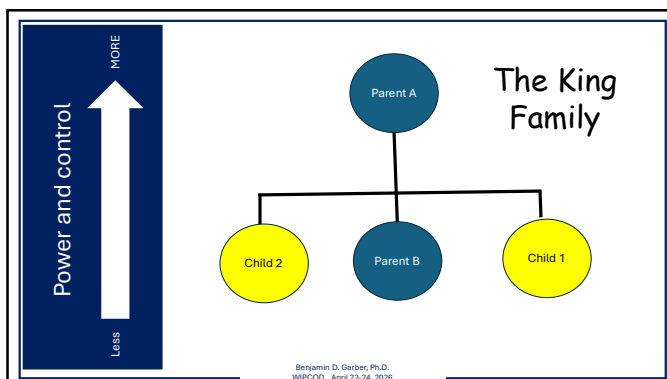
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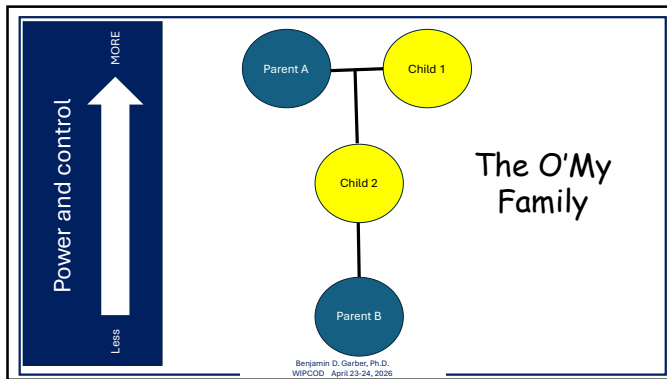
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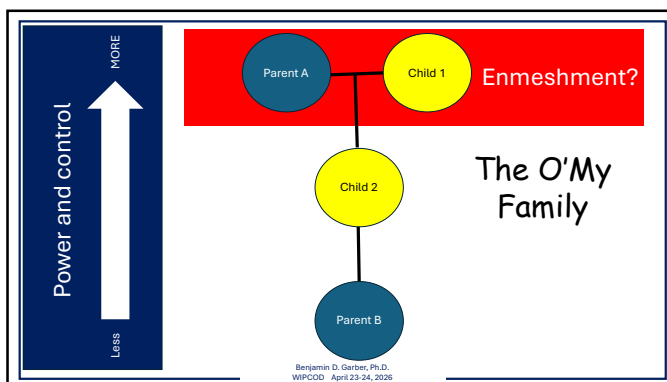
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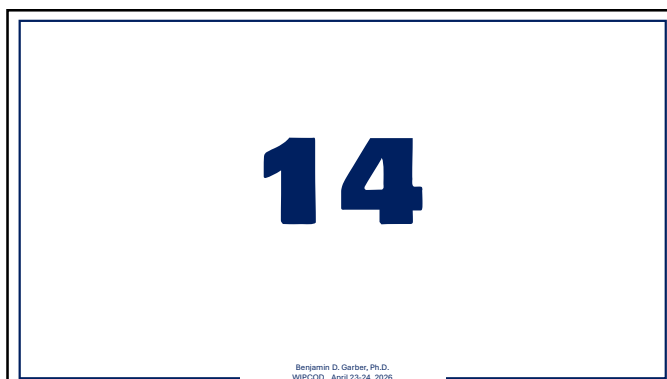
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Abuse is bad. Neglect is worse.

But we can't agree on the gray cases, e.g.:

- Is alienation = child abuse?
- Is enmeshment = child abuse?
- Is witnessing DV = child abuse?



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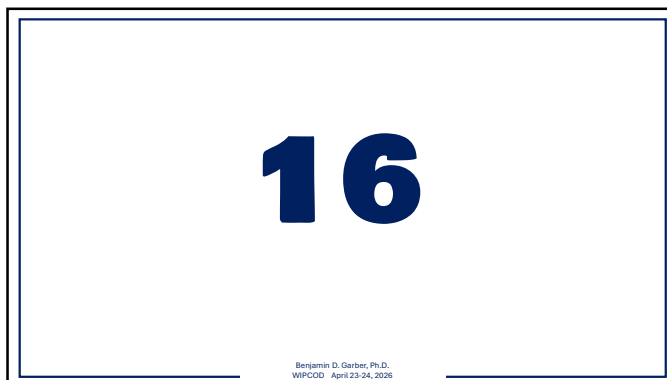
Children's health and development
 are optimized when they have the opportunity to
 enjoy a healthy relationship
 with both (all) caregivers



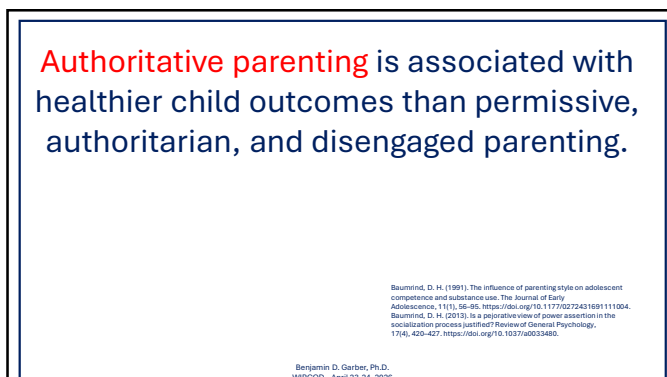
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Permissive parents are characterized by psychological autonomy, acceptance, and lax behavioral control

Authoritative parents are characterized by "the optimal combination of firm behavioral control, acceptance, and psychological autonomy"

Authoritarian parents are characterized by firm behavioral control, psychological control, and rejection

The permissive parent cannot tolerate the child's unhappiness and buys the child's affection, attention, and acceptance by giving in.

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The Authoritarian Parent

Parent Control

High

High

Authoritarian

141

Permissive parents are characterized by psychological autonomy, acceptance, and lax behavioral control

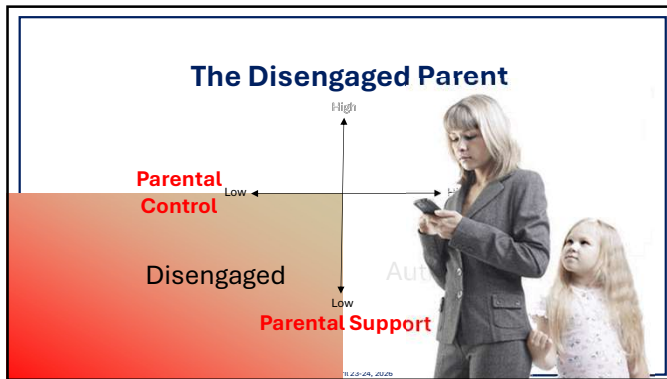
Authoritative parents are characterized by "the optimal combination of firm behavioral control, acceptance, and psychological autonomy"

Disengaged (or rejecting-neglecting) parents are characterized by rejection and lax behavioral control

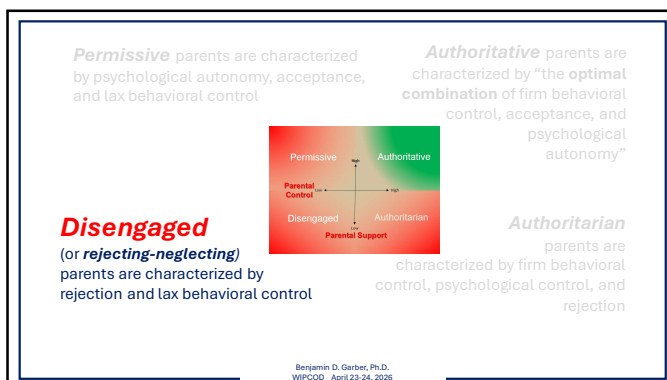
Authoritarian parents are characterized by firm behavioral control, psychological control, and rejection

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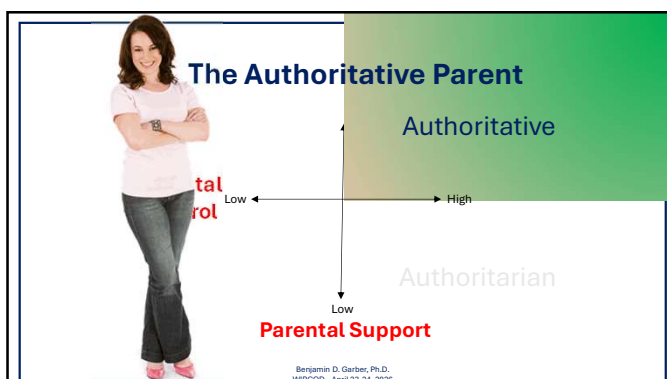
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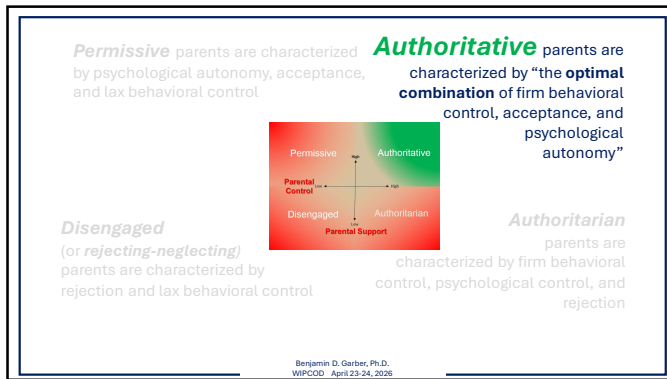
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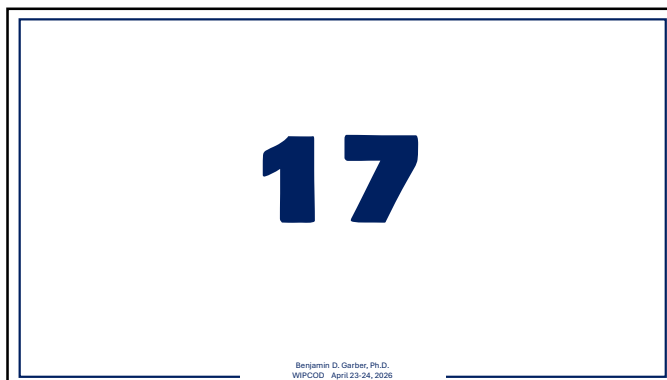
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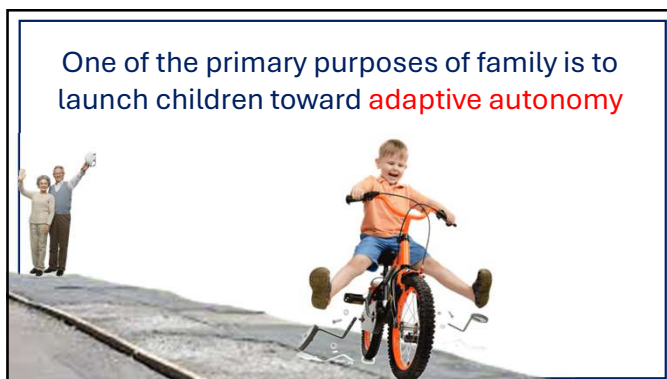
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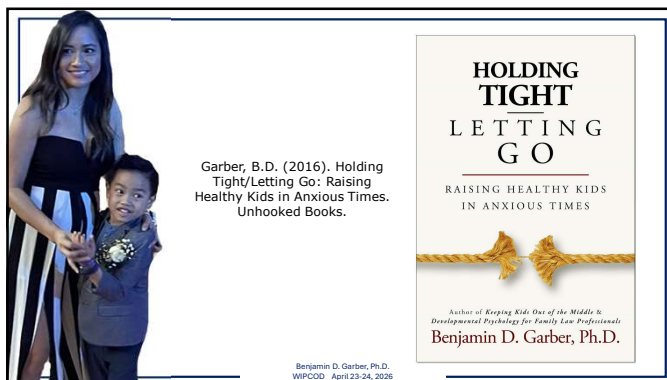


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Adaptive autonomy
= “fit”

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Systems naturally seek balance.



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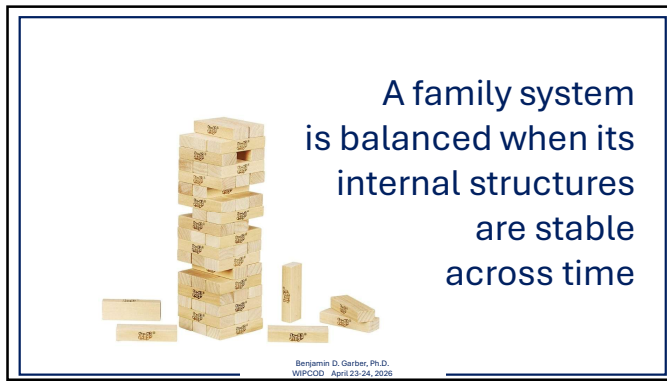


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In individual humans we refer to this as self-regulation.



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