

EARLY IDENTIFICATION AND PREVENTION OF PARENT–CHILD ALIENATION: A FRAMEWORK FOR BALANCING RISKS AND BENEFITS OF INTERVENTION

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1. INTRODUCTION

The concept of parent–child alienation has a long history of controversy in both legal and clinical practice in the family courts. The debate has become more intense as discussions about definitions and diagnoses have evolved, including the development of more controversial interventions such as those described by Gardner in his work on parental alienation syndrome (PAS) in the 1980s and more recently by Warshak in his preliminary evaluation of *Family Bridges: A Workshop for Troubled and Alienated Parent-Child Relationship* (Warshak, 2010). The family courts have seen increasing litigation about allegations of parental alienation (Bala, Hunt, & McCarney, 2010). In this article we put this debate into a broader historical context on the limitations of the justice system and our current knowledge in imposing various clinical interventions on separating parents and children and offer a framework for fostering the prevention and early intervention for parent–child alienation.

There is no doubt that parent-child alienation is a common and serious problem for some separating parents. Intentionally or unintentionally angry parents often say and do things that may undermine a child’s relationship with the other parent. Even within intact families, children can become aligned with one parent or the other based on gender, personality traits and interests (Heilbrun & Fromme, 1965; Proulx & Helms, 2008). These issues become more pronounced when parents separate and enter a bitter divorce process. Small cracks in relationships can become enormous divides, as one parent or both undermine a child’s respect and value for the other parent. Grandparents and family friends often exacerbate these problems by engaging in similar behaviors as warring clans fight for control of the children.

In this article we offer a new framework for approaching parent-child contact disputes in an effort to prevent alienation and respond more effectively to the early warning signs before more extreme measures have to be considered or implemented. We begin by highlighting the critical role of the justice system in screening and assessing alienation allegations. We outline guiding principles to assist professionals in prioritizing the goals of various interventions. We explore the different stages of early identification and intervention, and the underlying factors to consider in determining optimal legal and mental health strategies.

As we will discuss in the following sections, public and professional education programs need to emphasize the harm created in trying to ruin parent–child relationships that are essential for healthy development and socialization. At present, the professional debate in the field has become centered on extreme cases, best described as high-conflict divorces

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where there are significant challenges in a parent–child relationship. Judges, lawyers, and mental health professionals struggle with extreme cases when a child refuses to have contact with one parent after separation. The struggle becomes more pronounced if the word “alienation” is invoked. In some cases, the problem is seen as a willful attempt by one parent to take full control of a child and eliminate the role and responsibility of the other parent.

Depending on the knowledge, orientation and training of the professionals involved, the term alienation may have different meanings, with variation in diagnosis and intervention. As discussed in their context paper in this issue (Fidler & Bala, 2010), the concept of alienation has a rich history with varying redefinitions—from “pathological alignment” (Wallerstein & Kelly, 1980) to PAS (Gardner, 1992) to the “alienated child” (Kelly & Johnston, 2001). Other authors have reframed the problem in gentler terms, such as “access resistance” (Stoltz & Ney, 2002). The proposed solutions have ranged from voluntary to court-ordered child and parent counseling, to court ordered changes in custody combined with short term residential psycho-educational programs such as the Family Bridges workshop (Warshak, 2010).

As we discuss below, the controversy in the field comes at both the diagnosis and intervention stages. Some children may have a reasonable basis to be wary of a parent due to a history of domestic violence or child abuse (Jaffe, Johnston, Crooks, & Bala, 2008; Meier, 2009). In these cases, parents may be anxious about children having contact with the other parent and feel compelled to share concerning information about the other parent as part of legitimate safety planning. Even if there is an agreement on the nature of the problem and the causes (never mind sorting through multiple causes), there may be no agreement on the best clinical and legal intervention.

In high-conflict divorces, the specter of the court is always present through actual court hearings or potential court dates. When it comes to alienation, we are of the view that our current state of knowledge should humble us in what we recommend. Although we recognize the potential benefits of good custody evaluations, there are significant challenges in getting assessments right as professionals have to make many leaps of faith in the inferences drawn about individual parents, their interactions as co-parents and the best parenting match to the needs of children at different stages of development (Tippins & Wittmann, 2005). We also acknowledge that other authors have raised fundamental questions about the effectiveness of custody evaluations (Kelly & Ramsey, 2009). Even if we get past these important debates, we are left with the dilemma of when to call upon the authority of the court. In a seminal work in the field in 1973, Goldstein, Freud, and Solnit first raised serious concerns about the ability of the court (and state) to intervene in problematic parent–child relationships. They went as far as to argue that courts should not *order* visitation:

Custodial parents not courts or noncustodial parents should retain the rights to determine when and if it is desirable to arrange visits . . . because it is beyond the capacity of courts to help a child to forge or maintain positive relationships to two people who are at cross purposes with each other (p. 117).

Recently authors have returned to this theme of the limitations of judges and mental health professionals to effectively intervene with high-conflict families (O’Connell, 2009). Although many parents can be helped through education programs, counseling, mediation and collaborative law, there is some debate about how to handle serious alienation cases. Goldstein et al.’s words should not be forgotten in this debate since some children may end

up being exposed to a never-ending power struggle between two parents that may be beyond the system's ability to find a resolution. "Do no harm" should be a core value of the justice system (O'Connell, 2009), but it may be lost with the frustrations of professionals trying to manage severe alienation cases. The negative consequences of some coercive interventions in some cases may be worse than the presenting problems. We have raised the same concern in regards to the unintended consequences of legislation and interventions for domestic violence and the potential harm to children exposed to this violence (Jaffe & Crooks, 2004).

The issue of alienation and high conflict in separation and divorce proceedings may also overlap with other court applications, particularly where child protection and the welfare of children is raised due to concerns about emotional abuse and the impact of unrelenting parental conflict and litigation on children. Calls to child protection agencies may be made by one or both parents to initiate formal child welfare investigations with possible court involvement that is separate from the family court proceedings. In some jurisdictions when the custody/access matters are resolved (usually only for a brief period of time until further court proceedings arise), child protection agencies may ultimately become involved in helping to provide or orchestrate coordination of services to try to resolve some of the ongoing calls of concern.

Recent high-profile severe alienation cases in the courts in the United States and Canada have moved the alienation debate to a public center stage. Some divorcing parents and their supporters may generate hypotheses that alienation is present and demand extreme interventions, even if these allegations are unwarranted or are linked to domestic violence and serious parenting deficits (Bala, Hunt, & McCarney, 2010). Often parents and/or their counsel have not canvassed the most obvious alternative hypotheses to alienation that may be related to common problems in parent-child relationships. Separating parents often overlook the relationships with children that may have evolved differently based on their gender, personality and special interests or the child's coping strategy in dealing with a high conflict separation (Johnston & Goldman, 2010).

Renewed debate on alienation has been sparked by recent innovations in court-ordered (or "judicially suggested") short-term residential programs for alienated children and their parents. Warshak's (2010) article on the Family Bridges workshop has helped to demystify that intervention and clarify the purpose and nature of such psycho-educational programs, which may have promise for some families.

Given the recent cases and media attention, we are concerned that there may be an increase in the diagnosis of alienation and the promotion of intrusive interventions in cases where they are not warranted. There is a potential danger of a misdiagnosis leading to a change of custody, and children placed at risk if the rejected parent is abusive or neglectful, inadequate, or a virtual stranger to the child. There is also a risk that important attachment relationships with the favored parent are disrupted or severed, resulting in traumatic separations and loss. Even if there is evidence of enmeshment and pathological bonding with the preferred parent, an abrupt termination of the relationship can be traumatic. This trauma may precipitate out-of-control behavior or even suicide attempts. Furthermore, changes in custody may disrupt children's social and school relationships that were previously important sources of stability and conflict-free zones for them. Teenagers can become angry, cynical and completely lose respect for a court that, from the child's perspective, arbitrarily denies their voice and appears to have a sole focus on parental rights. Where allegations of alienation are the focus of a trial, the cost of legal services, assessments and expert witness fees can be in excess of two hundred thousand dollars, and

court ordered therapeutic or psycho-educational interventions can cost many thousands of dollars (*J.K.L. v. N.C.S.*, 2009 CanLII 9384 (Ont.S.C.)).

In a recent highly publicized Canadian case, after his return from an intervention program, an alienated teen ran away and was admitted to a mental health facility, later returning to the care of the previously alienated parent (*J.K.L. v. N.C.S.*, [2008] O.J. No. 2115, para. 193 (ON. S.C. 2008)). We do not want to generalize from extreme cases, but there needs to be caution raised about the financial and emotional costs of this type of litigation. Though rarely discussed, these high-profile cases and interventions are often the result of systemic failures to assess and intervene at the earliest possible stages for these families. Our overriding theme in this article is the need to focus on prevention through early identification and intervention that is affordable and accessible to separating parents. Rather than parents with troubled relationships putting energy into wanting to hold the other parent accountable, we want to encourage both parents to take responsibility for their part of the problem and get help early on in this process. We explore the systemic failure of many courts to address this role and in fact exacerbate conflict in the next section.

2. THE JUSTICE SYSTEM'S FAILURE TO DEAL EFFECTIVELY WITH HIGH-CONFLICT CASES

Modern family courts are designed to encourage the use of constructive, nonadversarial techniques to resolve family law issues, and provide litigants access to a range of support services. The vision of a unified family court system was one where specialized judges implementing the philosophy of “one family one judge” will provide parents with a cooperative holistic legal process as an alternative to the traditional adversarial system. The assistance of court support services, including parenting education programs and mediation, is seen as essential. This holistic approach and judicial case management are intended to encourage parents to make their own decisions about their children, while maintaining judicial control over the process.

However, in jurisdictions like our own, Ontario, where there is an absence of active case management and appropriately organized and supported family courts, high-conflict cases often drift endlessly and aimlessly through the court system as different alternative dispute resolution measures are tried out, and expenses and frustration mount (Mamo, Jaffe, & Chiodo, 2008).

First, we have to move away from the concept of Alternative Dispute Resolution to one that is designed to emphasize *Appropriate* Dispute Resolution. We have to recognize that, the formal authority of the court should be used very early in the process to hold parents accountable for their behavior and prevent ingrained conflict patterns. Second, the system needs to recognize and respect the personal integrity of children and the importance of their voices in these circumstances.

A family justice system with a case management paradigm that promotes Appropriate Dispute Resolution requires a principled approach as the basis for its triage of cases. The foundation of such a triage should be the level and nature of conflict between the parents. We believe that conflict is the best indicator of the intensity and nature of the case management that the case will require from the justice system.

Some parents seek independent advice and genuinely want to benefit from the wisdom and experience of legal and mental health professionals, while other parents may be fixed in their views and are demanding specific outcomes. Once parents resort to the courts for

the resolution of their matrimonial dispute, the justice system should from the outset engage in a triage process that (Goldschmidt, 2002) should be implemented to determine the level of needs and the nature and degree of conflict presented by one or both parents.

At some point the initial screening required may lead to assessments by mental health professionals as either brief analyses of the issues and potential solutions or more comprehensive assessments such as those provided by custody evaluators. Legal and therapeutic interventions first require some understanding as to why the parents are engaged in such a hostile conflict over their children (Johnston, 1994). Connecticut's Family Civil Intake Screen is an example of one such model where cases are screened on the level of conflict, communication and cooperation, complexity of issues, and level of dangerousness. This screening process has been associated with increased agreement rates and an overall decrease in the number of services provided (Kulak, Pruett, VanderSluis, McKnight, & Francis, 2008).

UNDERSTANDING THE SYSTEM'S STRUGGLE WITH ALIENATION

The recent rise in the number of high profile alienation cases highlights the inadequacy of the current approach. Alienation may become a handy label rather than a more objective clinical term. The process leading to the labeling of the child as alienated may follow a lengthy period of time of post separation conflict between the parents. By that time positions are deeply entrenched and accusations and counter accusations are allowed (if not encouraged) in a process that focuses on the gathering of evidence based on the conduct of the parents to be used as ammunition in the court fight rather than focusing on the child's welfare. The foregoing sentiments were forcefully expressed by Justice J. Harper of the Ontario Superior Court of Justice in the case of *P.L.M. v. L.J.*, 2008 CanLII 35923 (ON. S.C.) :

[166] It is not necessary or helpful to my decision to engage in the controversy within the clinical profession about the merits of concepts of parental alienation, realistic estrangement, or family systems based "alienated child" approach. I do find that the focus on the concept of parental alienation creates an environment that could lead to narrow and limiting analysis of very complicated dynamics of family interaction that must be understood in order to find a solution that has the best chance of success.

[169] . . . I do not find that the children's rejection of the mother was due to parental alienation. I find that the children are realistically estranged from their mother. The continued conflict has only served to make the degree of estrangement travel along an ever-increasing path of severity.

The solution to post separation parenting disputes is a family justice system that mandates early intervention by judges and clinicians based on established and accepted legal principles and social science. The real issue which needs to be addressed is the conflict between the parents that prevents the children from enjoying a meaningful relationship with each of their parents postseparation. An understanding of the underlying cause of the conflict is important so as to enable the justice system to manage it and adjust parental behavior with a view to creating a parenting regime that focuses on the welfare of the child and not one that seeks to impose retribution against the alleged "alienator."

Early intervention is also necessary to identify those cases where there is mental illness or personality disorder as the root cause of the problem. In such cases the current systemic

insistence on cooperation, attending parenting programs and mediation sets up these families for failure and prolongs the process unnecessarily. The court has to make an early determination on reliable evidence as to how the parent's psychological/psychiatric condition impacts on that parent's ability to parent, meet the child's physical, emotional, and psychological needs, rise above parental conflict and co-parent, as well as the likelihood of compliance with court orders and direction.

RECOGNIZING POTENTIAL SOLUTIONS IN THE JUSTICE SYSTEM

Parental conflict postseparation can only be managed and reduced for the long-term through a differentiated clinical/legal intervention. Such intervention utilizes the formal authority of the court and the insights of the clinician in combination to formulate and implement an intervention plan. The informal authority of the clinician is derived from knowledge, experience and expertise. The formal authority of the court (including its "coercive" powers) is derived from the institution of justice as an essential part of a democratic society.

Early identification of the level of conflict between the parents can be measured through standardized self-report tools. Such disclosure can be obtained at semi-structured interviews that follow guidelines which facilitate the gathering of detailed information necessary for a determination to be made as to the nature and intensity of the conflict. The results will allow the court system to apply the appropriate judicial resources in case management that is designed for the particular family, providing clinical intervention commensurate with the amount and intensity of the conflict. More intense parental conflict, as defined by its characteristics and severity, demands more intrusive court interventions through the imposition of terms provided in a multi-dimensional order.

There should be periodic court reviews to assess progress, holding parents accountable and allowing for adjustment of the court order based on feedback from all stakeholders involved, including the children. Recent reviews of family court systems based on this model have had encouraging preliminary evaluations (Salem, 2009).

Depending on the age and maturity of the children, they should be directly or indirectly involved and be provided with a voice in the process. Such input is not only necessary for the court to make the decision about custody, but also when counseling for the child is being considered by the designated custodial parent. Forcing a teenage child into treatment should not be done lightly.¹

Any significant intervention in the child's life that requires counseling or clinical treatment should seriously consider the child's wishes. It is not an adequate answer to say that because the child is "alienated," that her/his wishes should not be sought or ignored.² It is also inappropriate for a court to abrogate its *parens patriae* responsibility to the child, by not deciding if that child should be forced to attend a specific counseling program, choosing instead to delegate that judgment call to the newly appointed "alienated" custodial parent.³ The integrity of the child should be upheld by giving the child a voice in the process through a lawyer or a clinician. The notion that children's views have to be "independent" of those of their parents is unrealistic and defies the whole notion of parenting. Everyone's beliefs, and more so children's, are influenced by significant people in their life, especially those in a position of authority. In high-conflict cases, it is imperative for an intense case management approach to be taken based on the principle of "one family, one judge," so as to ensure continuity, consistency, and accountability. Judges with the appropriate experience, knowledge, and temperament should be assigned to these

high-conflict cases (Martinson, 2010). Beyond the judge, it is important that every court appearance be productive and meaningful (Mamo et al., 2008). In the context of high-conflict cases, a productive, meaningful court appearance will include the following ingredients:

- The utilization of judicial skills, knowledge, and authority;
- A defined purpose that is known to the litigants, their counsel, and the court;
- All relevant documentation and evidence is organized and filed in a timely fashion;
- The outcome is clear with respect to what is expected of the parties and the child, and sets out such expectations so that any subsequent court appearance will be able to measure progress and accountability;
- It involves input from community resources and clinicians where appropriate.

Unfortunately from our experience and research, there appears to be a lack of meaningful court appearances and little apparent resolution of the conflict in most jurisdictions in North America (Mamo et al., 2008). We argue here that the intensity of the intervention should be gauged by the nature and degree of conflict and response by the parents to the moral authority of the clinician and the formal authority of the court. There are typically warning signs of high conflict cases all along the path from parents' early responses to screening to preventative interventions such as parent education sessions, all the way through to more intensive clinical and judicial interventions in the courtroom. As part of a unified approach by all professionals in the system, there needs to be an agreement on the guiding principles and priorities in confronting potential alienation cases.

3. GUIDING PRINCIPLES FOR RESOLVING CONFLICTING PRIORITIES

The vast majority of parents are able to resolve custody and visitation issues without much intervention by the court or court-related services. When serious conflicts arise and the justice system is asked to intervene in some manner, professionals in the field are faced with balancing competing priorities in the best interests of the children. Janet Johnston has captured these priorities in her analysis of how to best approach high-conflict disputes involving allegations of domestic violence (as cited in Jaffe et al., 2008). Johnston recognizes that it is often impossible to find ideal parenting plans that will maximize a child's relationship with both parents in these cases and professionals may be left to find the best of less desirable alternatives. In her view, lower priorities should be abandoned in favor of higher priorities, so that in cases of domestic violence, child safety is an overriding priority (Jaffe et al., 2008). We have adapted her model to articulate key principles and priorities in child access disputes outlined below as well as the overarching strategy to begin with the goal of achieving all four priorities but resolving conflict by abandoning the lower priority if required by the circumstances. Because we are not focusing on child abuse or domestic violence in this article, we assume that a full list of priorities would include protecting the child and custodial parent from abuse as priority 1—in this model we are dealing with alienation and parent–child contact conflicts:

Priority 1. Protect children from ongoing parental conflict and litigation.

Priority 2. Protect the stability and security of the child's relationship with the primary parent and respect the right of the primary parent to direct his or her own life.

Priority 3. Respect the rights of the children to have a meaningful relationship with each parent.

Priority 4. Promote the benefits of children having a positive relationship with a co-parenting team.

Priority 1: Protect children from ongoing parental conflict and litigation. While a co-parenting relationship with both parents having trust and respect for each other and promoting a healthy relationship between the children and each parent is usually the desired ideal, the desire to achieve this ideal should not obscure the recognition that in some cases the benefit of having both relationships may be outweighed by the emotional and financial costs of litigation. It may be harmful to force fit a relationship if it results in never ending conflicts and undermines a child's ability to focus on being a child. This is recognized in more extreme child welfare cases, when the damage from abuse and the inability of parents to protect their children leads to the ultimate state intervention by removing the children from both parents' care. An argument has been raised that severe alienation is a form of child abuse (Warshak, 2010). However, we would consider the disruption of an otherwise well adjusted child from their primary home, school and social networks as a potential form of system abuse. Even with a clear court order, there are limitations associated with mandatory interventions and the inability of the court to manage relationships even with good court-related services (Goldstein et al., 1973; O'Connell, 2009). At some point a decision has to be made that, despite best efforts, some relationships are beyond repair and need to be supervised or terminated pending a review at a later date.

Priority 2: Protect the stability and security of the child's relationship with the primary parent and respect the right of the primary parent to direct his or her own life. The level of conflict may be so severe that the parents cannot communicate or make any plans together. The access parent may require supervision and/or coaching to ensure positive contact around an activity that the children enjoy and match that parent's interest or skills. There are circumstances where each parent is accusing the other parent of alienation-like behaviors and the origins of the problems are unclear. The results may be never ending conflict that is beyond the best therapy available. There are cases where the primary parent may want to move away with the children but the other parent feels that the move is intended to frustrate the relationship with the child. An assessment by legal and mental health professionals needs to examine the reasons for the move and the benefits for the primary parent and the child. If conflict is very high, what needs to be determined is whether some limited contact with the non-primary parent is not disruptive to the child's sense of stability or security.

Priority 3: Respect the rights of the children to have a meaningful relationship with each parent. There are circumstances where a great deal of animosity has developed between parents, but the justice system is able to protect the children from the conflict. Each parent has much to offer the children but the adults have to be kept apart through transfers in neutral places. In some situations the term "parallel parenting" may be used to describe a highly structured plan to keep them apart, but that still allows both parents to have extensive time with the children (e.g., pick up after school rather than multiple transitions from home where tensions run high). Parents are not genuine partners but are given enough structure to protect the children from ongoing disputes.

Priority 4: Promote the benefits of children having an ongoing, positive relationship with a co-parenting team. The goal of the family justice system is that couples will only

separate as intimate partners, but will try to remain united as co-parents. Every court related service such as parent education programs or mediation makes co-parenting the top priority. Only if there is credible evidence of a high conflict dispute and concerning allegations such as domestic violence or alienation, should alternatives to co-parenting be considered.

Case Examples

- A. *Achieving Priority 4 over time.* The Smiths separated 1 year ago. The children ages twelve and nine refused to see their mother, who was perceived to have “run off” with a family friend. Mr. Smith promoted an image of the mother as a prostitute to the children. Mrs. Smith shared court documents with the children and promoted an image of the father as “drunk and depressed” prior to her leaving the relationship. The parents were referred to a court mediation program and both parents were counseled on how their behavior was damaging to the children. Both parents were asked to protect the children from the conflict and seek outside therapy to address their feelings about the marital breakup. Mr. Smith followed through on the advice but Mrs. Smith continued to justify her position. On an interim basis, the children remained in the family home and neighborhood school with Mr. Smith and had alternate Saturdays with their mother for a movie and dinner. The court decided that only one parent could be in charge and that the litigation had taken an adverse toll on the family, thus preventing the children from reestablishing their lives after the divorce. The matter was reviewed in six months by the court; by then Mrs. Smith had heeded the advice of her lawyer and counselor and was permitted to see the children on alternate weekends and every Wednesday. Upon review by the court at 1 year, the plan was extended to alternate weeks with the transfer at school on Friday afternoon within a co-parenting regime.
- B. *Achieving Priority 3 over time.* The Kelly’s separated 1 year ago. Their daughters ages five and seven refused overnight visits with their father who had been an absent parent due to extensive business travel. Mrs. Kelly had no confidence in Mr. Kelly’s ability to manage the children. Her views were supported by an accident on a bike by the youngest child who required stitches. She blamed the accident on poor supervision. She repeatedly told the children that their father was incapable of looking after them. The girls repeated these views, using their mother’s own words, to a court counselor and a custody evaluator. Both professionals saw much potential in the father to become more involved and diagnosed the early warning signs of an overprotective mother and potential alienation. The court ordered alternate weekend access and a review in three months time. Upon review by the court counselor, there were times that father excelled as a parent in teaching the children to ski and swim. There was no pattern of accidents or harm to the children. His parenting time was expanded to integrate the activities which the children enjoyed. He played a significant and meaningful role in their lives that recognized the time he was away on business and still left Mrs. Kelly as the primary and residential parent.
- C. *Achieving Priority 2.* The Robbins’ separation appeared amicable at first, with the 4- and 6-year-old girls having frequent contact with their father and primary residence with their mother. Mrs. Robbins became involved with a senior vice-president of the bank where she worked who lived in a city 200 miles away. Mr. Robbins became jealous of the new relationship and started to criticize Mrs. Robbins in front of the children. The children show signs of anxiety and distress at school

which affected their behavior and achievement. Mrs. Robbins was offered a promotion to the head office with a significant salary increase and benefits. Litigation started over custody and relocation. One of the girls had a chance to attend a special school for the arts that was available in the new community and would foster her outstanding ability on the piano. A custody evaluator reported that the mother would promote contact better than the father because of his jealousy and supported relocation with the mother as the primary parent. The move was approved by the court, with one weekend a month access for the children with their father. After he completed counseling to deal with his unresolved issues over the marital break-up and upon court review, the contact was extended to half the summer and school holiday period at Christmas and Spring break.

- D. *Achieving Priority 1.* Susan Jones was a professional golfer who met her husband in college. They have a seven year old son who remained in the care of his father after the couple separated shortly after his birth. The son benefited from after school care and support from the paternal grandparents. Susan fell in love with another female golfer on the pro tour and had alternate weekend visits with her son. The father made disparaging comments about lesbians, and the paternal grandparents told the boy that his mother was “sick” and her behavior violated their deep religious beliefs. The boy began to refuse to go on visits. Court orders for visits were hard to enforce as the boy became physically ill before any planned visit. The mother applied for custody and relocation to a larger community with a supportive lesbian community, claiming that the father and his parents were waging an alienation campaign. After two years of litigation, the court decided that there was alienation that was beyond repair and awarded custody to the father, with mother’s contact limited to the first Saturday of the month through an exchange at a supervised visitation center. Mother had access to school and medical information and a review date was set a year ahead.

These cases illustrate some of the complex challenges that court-related professionals face when dealing with conflicting allegations of alienation. Alienation rarely happens as a discrete problem and is usually part of other difficulties related to family conflicts, mental health issues, domestic violence allegations, and unresolved feelings about the separation (Johnston & Goldman, 2010). In each of the cases above, attempts were made to promote co-parenting relationships and yet reduce the level of conflict that the children were being exposed to on a regular basis. The cases illustrate that time and skillful counseling may resolve conflict in some cases, while other cases demand different decisions to create some peace in the children’s lives. Parental rights may need to be trumped by the children’s rights and needs to have an end to the conflict.

In the following section we examine the strategies to achieve these priorities and try to balance the competing interests in these disputes about children’s best interests.

4. HOW TO ACHIEVE THE PRIORITIES—ROLE OF EARLY IDENTIFICATION AND INTERVENTION

To examine how to achieve these priorities, we need to revisit strategies available from the literature and begin to apply them earlier in the process rather than let alienation dynamics flourish. Some of these critical strategies and current models of practice will be elaborated upon below.

a. Nonintervention

In some situations no formal intervention is needed as the children appear to be able to manage with the support of some family members and friends who remain nonaligned and neutral. For some children, neutral adult supports are protective factors from the impact of the parental conflict. Some children are more resilient and have sufficient healthy connections that they are less negatively influenced by their warring parents' actions or comments. They are able to hold a world view that incorporates sufficient information about their family situation that is counter to the negativity that may be expressed by one or both parents. In these circumstances, a brief assessment will likely suggest that no further intervention is required and the existing support system can be reinforced as the best remedy.

b. Parent Education

Lawyers and helping professionals may encounter cases early in the separation process with signs of alienation activities. The approaches used can fan the flames of alienation allegations or promote prevention efforts. For instance, timely intervention by good parent educators may be able to shift the dynamic away from becoming an entrenched alienation case to one where the parents are able to re-focus on the needs of the child and keep their efforts highly child-centered. (Arbuthnot & Gordon, 1996). With better understanding, it is hoped that parents can remain focused on helping their children (and themselves) to navigate their divorce with the least amount of conflict and alienation activities.

c. Voluntary Individual and Family Therapy

With the aid of a good assessment, both parents may become open to voluntarily participating in counseling that can address the impacts of separation and divorce on the various members of the family. The literature speaks to many clinical challenges related to unresolved issues for children and adults arising from separation and divorce situations that have not been handled well, especially where conflict remains high and accusations of alienation flourish (Kelly & Emery, 2003; Johnston et al., 2005). Parents may require counseling to accept that they are separating from a spouse but the children need an ongoing relationship with their other parent. Clinical issues related to anger, grief, loss, and also ambiguous loss (Boss, 2006) may be addressed in individual or family therapy. Ambiguous loss is particularly relevant for some of the high conflict, alienation cases as children are caught not knowing if/when they might see the other parent and find it difficult to resolve the situation given the various unknown aspects. We recognize that not all therapy is effective and there are cases where therapists become advocates and exacerbate the conflict.

d. Assessment, Court Monitoring, and Reviews

If conflict is high, the courts and clinical services must ensure that early identification and interventions respond in a timely manner to protect children from the conflict. Appropriate Alternative Dispute Resolution (AADR) initiatives, such as mediation, may shift the family away from ongoing court appearances towards engaging in decision making to resolve the matters. However, if the conflict and alienation are such that AADR efforts

break down or are not deemed appropriate, court-ordered assessments and follow-up reviews may be the most effective response. Comprehensive assessments that take into consideration the developmental ages of the children and the parenting skills that match the needs of the children may also aid the court as it intervenes in the family system. In other cases, the court may want a review of the situation after counseling has been implemented or may need to orchestrate some further structure on the case with the aid of a parenting coordinator to ensure that the conflict and attempts at alienation stay in check while the parents learn how to communicate more effectively. Judicial leadership is critical in shifting the system from individual court hearings to a coordinated case management model that both monitors and assists families.

e. Court-Mandated Interventions

In some high-conflict cases where alienation is clearly evident, parents may continue to return to court and consume many valuable resources of the family, the justice system, and the helping community. In some cases more extreme conflicts will continue, despite the best efforts of the various professionals involved. Parties may argue over issues such as the amount of parenting time, which parent is to blame for the current situation, or the reasons behind the children's resistance to spending time with one parent. In these scenarios, the court's firm handling of the matters early on, as the alienation and conflict ramps up, is critical. The court may need to outline clearly in the court orders the potential sanctions for parents who are not allowing access. A clear judicial explanation of what may result, such as fines for contempt, a potential change in custody or other consequences to one or both parties for not following the direction of the court, becomes important. Although it may seem heavy handed, some parents will only listen to input from the court. A minority of parents who suffer from personality and mental disorders may ignore the court and spend their waking hours finding ways to exhaust the other parent emotionally and financially. Therefore, timely interventions by the court are essential.

f. Extreme and Intensive Intervention

Unfortunately, in some situations, even with a firm handling by the court, parties may continue to ramp up the conflict, such that the cases present with severe levels of alienation. In these scenarios, more extreme efforts may be required. The court may be left to try to micromanage the parenting time and depend heavily on court-related resources, such as parenting coordinators and supervised visitation centers. The court and the parties may be open to considering an option such as the Family Bridges workshop, which may be considered more extreme by the fact that children could be ordered to attend an out of state residential program and be separated from their primary parent.

We would suggest that it may still be too early to recommend such measures without enough evaluation data available to aid the court in determining that this is an appropriate remedy. Although the preliminary evaluation of that intervention is encouraging (Warshak, 2010), it lacks the kind of research to promote it as an answer to these cases or a better plan than no intervention or community based counseling efforts. We do not want to suggest an unreachable research standard of randomly assigned high-conflict families assigned to different interventions, but we think there needs to be longer follow-up studies of intensive interventions compared to matched cases where the families have pursued alternative or no

intervention. In the absence of such research, we question how such a measure can fit with our clinical best practice requirements of “do no harm” (O’Connell, 2009), especially in light of other preliminary research which suggests some children who refuse parent contact reconcile with that parent in their later teen years (Johnston & Goldman, 2010).

It may well be another matter if the various parties (children included) voluntarily wish to attend the camp, *Overcoming Barriers* (Sullivan, Ward, & Deutsch, 2010) or *Family Bridges* to address the challenges before them. However, we wonder how the family members can be good advocates for themselves and make the difficult and expensive decision to participate without the research data available to support them yet.

We recommend that serious consideration be given to another extreme response for cases that have reached a high level of alienation—that being to leave it as it is and not intervene with families to protect the children from the ongoing litigation and uncertainty. The court may have to terminate the role of one parent, at least on a temporary basis, as part of a “cease fire plan.” Although the children will not have an ongoing relationship with both parents, at least one parent has a significant relationship with the children and, leaving things alone allows that to continue with ongoing counseling as appropriate in the circumstances. In at least some of these cases there may be spontaneous child-initiated reunification with the rejected parent (Darnall & Steinberg, 2008).

We are not intending to minimize the harm of alienation (see Fidler, Bala, Birnbaum, & Kavassalis, 2008 Chapters 6 for an excellent review) or the possibility of an unhealthy attachment to the primary parent. However, we think the court and clinicians have to give sober second thought to doing more harm than good in their interventions (Johnston & Goldman, 2010).

FRAMEWORK FOR LEGAL AND MENTAL HEALTH PROFESSIONALS—PUTTING IT ALL TOGETHER

As noted in the introduction and other articles in this journal, various approaches over the years have been attempted to try to keep children out of the middle of the high conflict and alienation activities of their parents. Giving voice to the children’s experiences, not ignoring the rights of children, not interfering with what is going well in children’s lives, doing no harm, education for parents and children about divorce, and triaging cases much earlier in the court process have been suggested (Salem, 2009).

Woven into many of these approaches has been the discussion of the diagnosis of alienation, with the ensuing debate in the field about the validity of this diagnosis, and how to evaluate the degrees of alienation (Stoltz & Ney, 2002). More recently, this debate has expanded to include how to intervene in alienation cases such as changing custody, leaving cases alone, intensive therapeutic efforts, and now more recent efforts such as the *Overcoming Barriers Family Camp* or the *Family Bridges* workshop. It is important that we do not apply the wrong literature to the wrong cases such that things are made worse for children and their parents (Johnston, 1994).

We offer a model below to promote prevention and early identification of alienation. Our proposed framework and analysis of priorities is represented in Figure 1. In Figure 1 we propose “A Framework for Assessment & Early Identification and Intervention for Parent Alienation Allegations.” We hope that this Framework, when considered along with the Evaluation of Priorities for cases discussed above, can aid courts and helping professionals to intervene in a timely and effective manner to ensure protection of children from warring parents invested in alienation efforts.

A Framework for Interventions in Alienation Allegations

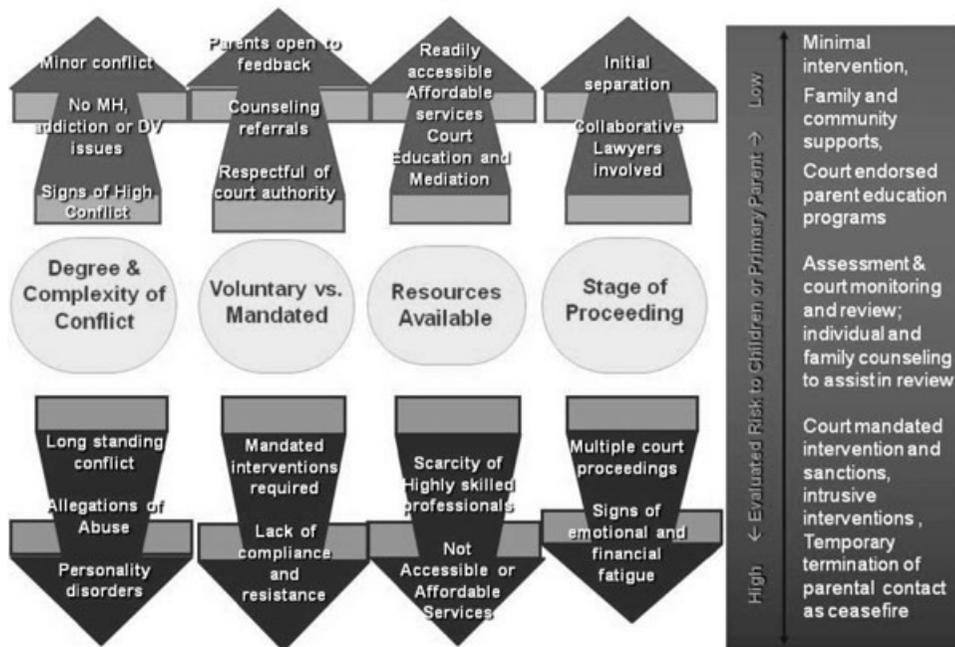


Figure 1

The key variables in our framework include the following: (a) **the degree and complexity of conflict**; (b) **voluntary versus mandated interventions**; (c) **resources available**; and (d) **stage of the court proceedings**. These variables should be linked to the ultimate interventions being considered in the context of their effectiveness and potential risks:

- (a) **Degree and complexity of conflict.** We suggest that it is not just the degree of parental conflict but also the history of parental and child relationships that need to be understood in extreme alienation cases. Furthermore, factors that speak to current or ongoing mental health, addiction, domestic violence, level of compliance, and personality disorders may complicate the parental conflict and need to be thoroughly assessed. Since a significant number of reported litigated cases on alienation make court findings of domestic violence and inadequate parenting skills (Bala et al., 2010), we hypothesize that these cases may have been screened away from litigation or resolved earlier with the proper tools in place. Parents who can be successfully engaged in taking responsibility for making personal changes in both their lives and interactions with their former partners offer hope for more modest interventions.
- (b) **Voluntary versus mandated interventions.** It is important to not only understand the degree to which the court system is involved but also to appreciate the nature of the court's involvement. We encourage ongoing feedback to parents and their seeking voluntary programs in the community. These efforts should be documented to lay the groundwork for better case management in the event of ongoing

litigation. The court needs to stay informed about the progress made by the parties with regards to services recommended. A lack of commitment to voluntary services may translate into specific court orders and sanctions.

- (c) **Resources available.** Many communities lack resources and many families lack funds to access existing resources. Thorough assessments may not be helpful if the proposed parenting plans include recommendations for services that are not available in the local community or cannot be afforded. Some families are left with no alternative but to try to engage with reluctant child protective services for assessments and services, or are left without any services.
- (d) **Stage of the court proceedings.** Recognizing the stage at which the family is currently engaged with the court or community services is critical. Early efforts at identification and intervention may shift children away from developing resistance or better discourage parents' alienation efforts.

5. CONCLUSION

Interventions must be effective and respectful of children's rights. Specialized assessments are needed to match families to different interventions, although even this process can be considered coercive intervention and not as benign as we assume (Kelly & Ramsey, 2009). Before moving in the direction of even more coercive interventions, such as Family Bridges (Warshak, 2010), we would encourage legal and mental health professionals to renew their commitment to prevent alienation in the first place or provide earlier clinical and court interventions when identified by the triage process.

We should not allow systemic failures that may result in cases of severe alienation to be further compounded by highly intrusive interventions. At this point, there is a lack of evidence that in high conflict cases an intervention like Family Bridges combined with a termination of contact with the primary caregiver is better than leaving the child with the primary parent; such an intervention undermines a child's sense of stability and security. We recognize that there are tough clinical and legal decisions in cases where the child's relationship with the primary parent includes symptoms of an unhealthy attachment. Clearly, in these high conflict alienation cases more effort needs to be invested at the front end and at an earlier stage of the proceedings to prevent alienation from expanding. Our intervention efforts need to be affordable and accessible to families and ideally matched to the specific case dynamics. Too much attention has been spent on the few high profile cases where systemic failures abound. In some situations it may be best for the court to implement a ceasefire and require families to end the ongoing litigation war to save the children. The termination of one parent's relationship with the children (at least for a time) to save the children from the war may be the best course of action in some situations.

We believe that the jury is still out on controversial interventions such as Family Bridges or Overcoming Barriers, where important attachment relationships with the favored parent are disrupted and may result in traumatic separations. Even in the face of pathological bonding with the preferred parent, an abrupt termination of the relationship (a virtual "parentectomy"—see Johnston, Roseby, & Kuehnle, 2009) can be traumatic and may disrupt children's social and school relationships that were previously important sources of stability and security for them. We maintain that interventions such as those proposed by Johnston and Goldman (2010) in this issue should be given priority in these cases. Although their approach is still in the early stages of evaluation, these interventions appear

less drastic to the authors. Further research on a differentiated match of interventions to diverse alienation cases will better guide our efforts for children caught in these circumstances.

NOTES

1. See *A.C. v. Manitoba* (Director of Child and Family Services), [2009] SCC 30, (discussion of Abella J.) (arguing about the rights of mature minors to participate in treatment decisions: from a legal and clinical point of view consent to treatment is even more complicated in alienation cases where a judge decides that the lack of consent is not independent).

2. See *J.K.L. v. N.C.S.*, [2008] O.J. No. 2115, para. 193 (ON. S. C. 2008) (statement of Turnbull J.) (“To accede to the submission that no treatment or counselling for LS and his mother can be undertaken without LS’s consent would effectively mean that there is no remedy in law for an alienated child in these circumstances. It would mean there is nothing the alienated parent could do to remedy the situation and the wrongdoer would be rewarded for his conduct. I do not accept that that is the law.”).

3. *Id.*, at para 192.

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