



PROGRAM MATERIALS

Program #31273

November 9, 2021

Where Family Lawyers and Mental Health Professionals Cross Paths; Parental Alienation, Reunification Therapy and Direct and Cross Examination of Mental Health Professionals

Copyright ©2021 by

- **Elisa Reiter, Esq. - Underwood Perkins, PC**

All Rights Reserved.

Licensed to Celesq®, Inc.

Celesq® AttorneysEd Center
www.celesq.com

5255 North Federal Highway, Suite 100, Boca Raton, FL 33487
Phone 561-241-1919

CELESQ: 31273

Where Family Lawyers and Mental Health Professionals Cross Paths: Parental Alienation, Reunification Therapy, and Direct and Cross Examination of Mental Health Professionals

Featured Presenter: Elisa Reiter

Underwood Perkins, P.C.
5420 L.B.J. Freeway, Suite 1900
Dallas, Texas 75240
(972) 661-5114
<https://underwoodperkins.com>
ereiter@uplawtx.com





Elisa Reiter, Esq., is Board Certified in Family Law and in Child Welfare Law by the Texas Board of Legal Specialization. She is a Senior Attorney, practicing with Underwood Perkins, P.C. in Dallas, Texas. Mrs. Reiter focuses her practice on family law matters (including simple to complex divorces, LGBTQ issues, grandparent rights, foster parent interventions, modifications of child support and custody, cases involving parental alienation and reunification, as well as premarital, cohabitation and postnuptial agreements, and elder law issues). Elisa Reiter's trademark: TENACITY. Elisa Reiter is licensed to practice in Texas, New York, Massachusetts and D.C. She is a Life Fellow of the Texas Bar Foundation. Election to the Fellows is one of the highest honors that can be bestowed upon a member of the State Bar of Texas. Nomination is based on outstanding contributions to the legal profession as well as a commitment to the community. Mrs. Reiter is a 2021 SuperLawyer. Mrs. Reiter is a certified mediator and is a certified collaborative lawyer. Elisa graduated from SMU Law School at the age of 22, where she later returned to teach family law. Elisa Reiter holds an AV Preeminent rating as a trial lawyer from Martindale-Hubbell, peer-reviewed at the highest level of professional excellence for legal expertise, communication skills and ethical standards. A prolific presenter and writer (Reiter writes), her work has been published in numerous ALM periodicals, including TEXAS LAWYER, NEW YORK BAR JOURNAL, and DAILY BUSINESS REVIEW.

Contents

I.	Parental Alienation.....	3
1.	Parental Alienation Basics.....	3
2.	Battling Parental Alienation.....	7
3.	Staying Out of the Courthouse.....	8
II.	Reunification Therapy.....	13
1.	What Reunification Therapy Is and Isn't.....	13
III.	Direct and Cross Examination of Mental Health Professionals.....	40
1.	Direct Exam.....	46
2.	Essence of Cross Exam.....	57
3.	Hearsay.....	59
4.	Summary.....	62
IV.	Articles of Interest.....	63
	A. DROZD et al, Changes in Resist Refuse Dynamics Checklist.	

I. Parental Alienation

1. Parental Alienation Basics

In a perfect world, children are raised to appreciate and love each of their parents. We do not live in a perfect world. Children typically find different attributes in each parent. A child may align with one parent on certain matters, and with the other parent on other matters. Richard Gardner ¹observed that parental alienation syndrome – which he perceived as a disorder – may be found “primarily in children who had been involved in protracted custody litigation.” There may be times when a child’s rejection of a parent is justified; for instance, if the child has been privy to partner violence, emotional abuse, or negligent parenting. In more modern parlance, “when a child resists or refuses contact with one of their parents, we call this Resist Refuse Problems”.² While it is natural for a child to develop an affinity for one parent (in other words, the child feels more comfortable with that parent in certain contexts, tied to age, gender, or shared interests), sometimes that natural affinity is interrupted or misdirected. Parental alienation is about more than simply letting a child know that he or she is missed during time spent with the other parent. Parental alienation forms due to active interference by one parent of the other parent’s relationship with the

¹ Richard A. Gardner, M.D. Family Evaluation in Child Custody Mediation, Arbitration and Litigation 225 (Creative Therapeutics, 1989).

² John A. Moran, Ph.D., *et al.* Overcoming the Alienation Crises: 33 Coparenting Solutions 9 (Overcoming Barriers, Inc. 2020).

child. The child not only begins to refuse to see or to speak with the reviled/rejected parent – the child blatantly rejects the parent who is the object of the child’s scorn. This is not simply about an adolescent declaring in response to being grounded “you suck!” or “you are the worst mother ever!” Parental alienation is not simply one parent brainwashing a child to view the other parent poorly; Dr. Gardner defined parental alienation syndrome as:

. . .a disturbance in which children are preoccupied with deprecation and criticism of a parent-denigration that is unjustified and/or exaggerated. The notion that such children are ‘brainwashed’ is narrow. The term *brainwashing* implies that one parent is systematically and consciously programming the child to denigrate the other. The concept of the parental alienation syndrome includes the brainwashing component, but is much more comprehensive. It includes not only conscious but subconscious and unconscious factors within the programming parent that contribute to the child’s alienation from the other. Furthermore . . . it includes factors that arise within the child –independent of the parental contributions – that play a role in the development of the syndrome. In addition, situational factors may contribute, i.e. factors that exist in the family and the environment that may play a role in bringing about the disorder³.

Often, the child not only rejects the parent from whom they have become alienated; the child rejects all things and all people the child associates with the rejected parent. In some alienation cases, many accusations are levied against the rejected parent; moreover, a child may act out in certain ways, including becoming physically violent when in the rejected parent’s possession. What could lead to such circumstances? Certainly, a high conflict divorce comes to mind as being a potential catalyst for parental alienation.

So, what’s the problem with parental alienation? Lifetime litigation abounds. Children are being taught that it is perfectly acceptable to engage in poor behavior, including name calling, physical abuse, and ignoring a connection to a family member who was previously beloved. Alignments between a child and his or her parents are natural; however, if a child is aligned with one parent to the point of ignoring the other parent, the child “may express in strong and rigid terms their wish to spend more time with the favored

³ Gardner, Richard A., *supra* at 226.

parent. After divorce, a child's alignment may be caused by a loyalty conflict. . . an important distinction is made between justified rejection and alienation".⁴

Alienation includes beliefs that are unjustified, which ultimately interfere with a child's on-going relationship with a parent. For instance, a child under ten questioning a parent's capabilities, anger, or facilitating interference with periods of possession and access. There may be occasions that warrant protective behavior, such as when a parent has been physically or emotionally abusive to a child. Think of a supporting affidavit for a protective order and/or for temporary orders – does a parent genuinely constitute an imminent threat to a child's physical or emotional well-being?

How does parental alienation manifest itself? With an irrational "'hatred' of a parent".⁵ An alienated child harbors no guilt nor embarrassment in disparaging a rejected parent. The child's recounting of woes often sounds too adult to be the words of a child; the child will recite a list of wrongs they perceive that the rejected parent has committed. Often, the child will parrot the very verbiage used by the beloved parent with whom the child is aligned. For instance: *You only act that way when your girlfriend is around. I hate you. I hate you. Don't you believe me when I tell you I hate you? You should. I've never loved you. I never will love you. You are a liar. Why can't you just leave me alone? I never want to see you again.*

In the fashion of a former spouse who continues to berate a former partner for "abusive" conduct such as failing to put the top on toothpaste, failing to hang toilet paper to assure that the roll peels over rather than under, or failing to keep condiments alphabetized, a child suffering from parental alienation will recite things remembered and/or imbued. Children will harbor secrets, only to spill secrets from one parent to the other. "Alienation occurs when a child has previously had a reasonable relationship with a parent, and the reasons the child states for resisting the parent are unjustified or unreasonable, given the parent's behavior or relationship history with the child".⁶ Here's the rub – often each parent denies culpability for

⁴ John A. Moran, Ph.D., *et al.*, *supra* at 10.

⁵ Richard A. Gardner, M.D., *supra* at 228.

⁶ John A. Moran, Ph.D., *et al.*, *supra* at 13.

the child's rejection, instead projecting blame on the other parent. Information on the internet abounds; just as we all suddenly seem to be experts on COVID vaccines and other issues of the day thanks to information being at our fingertips, many feel certain that they are the victims of parental alienation due to running a thorough check of the internet. Parental alienation is not simple; it is complicated. Internet sleuths beware – this is a sophisticated issue, with malicious overtones.

Remember this: parental alienation may be viewed as a disorder by many; however, parental alienation is not a disorder defined in the Diagnostic and Statistical Manual of Mental Disorders-V.

“...[P]arental alienation did not meet the standard definition of mental disorder, that is, ‘the requirement that a disorder exists as an internal condition residing within the individual.’”⁷ Dr. William Bernet of the Vanderbilt University School of Medicine, along with two contributors to the DSM-V, published an article that was peer-reviewed in the *Journal of the American Academy of Child & Adolescent Psychiatry* noting that a new term included in the DSM-V was “child affected by parental relationship distress” also known as CAPRD. “Parental relationship distress”⁸ includes persistent disparagement of one or parent by the other parent. Often, a child suffering from CAPRD “displays impaired functioning in behavioral, cognitive, affective, and/or physical domains. Examples include oppositionality and the child’s reluctance or refusal to have a relationship with a parent without a good reason . . .”⁹

Sometimes, there may be issues in addition to overt alienation. For instance, Margalis Fjelstad and Jean McBride write in Raising Resilient Children that “many people exhibit strong borderline or narcissistic behaviors or traits”.¹⁰ Fjelstad and McBride identify the following traits of such parents:

- Extreme emotional reactions

⁷ W. Bernet, *et al.*, (2016). *Child Affected By Parental Relationship Distress*. *Journal of the American Academy of Child & Adolescent Psychiatry* at 575.

⁸ *Id.* at 572.

⁹ *Id.*

¹⁰ M. Fjelstad and J. McBride. (2020) *Raising Resilient Children with a Borderline or Narcissistic Parent* at 6.

- Self-involved thinking
- High need for attention
- Lack of empathy
- Controlling and devaluing others
- Emotional inaccessibility
- Difficulty caring for others
- Impossible demands on their loved ones

Fjelstad and McBride add that such individuals cannot tune into others, demand full attention of those around them, engage in overcontrolling or neglectful parenting – and that such actions have a direct impact on their children, including:

- Poor self-image, feelings of insignificance
- Difficulty trusting themselves or others
- A sense of emptiness
- Feelings of being unloveable
- People pleasing
- Passivity
- Buried anger
- Lack of confidence, follow through, and/or motivation
- Fear of intimacy, yet a desperate need for intimacy
- Guilt, fear
- Out of touch with their own feelings, thoughts and wants
- Lack assertion, difficulty protecting their boundaries and rights
- Poor leadership and problem-solving skills¹¹

¹¹ Id. at 9-10.

Narcissists and borderlines will, in their respective ways, insist on compliance within their family unit. Disagreement with a narcissist or borderline often means that problems simply defy resolution. Such families, according to Randi Kreger and Paul Mason, are perplexed by fear, obligation and persistent guilt.¹²

In addition:

People with narcissistic behaviors don't usually get so emotionally panicky, frenzied, or withdrawn and nonresponsive. Their out-of-control behaviors are typically rages, extreme demands for control, and emotional attacks and threats toward you and the children. Their escalation of these behaviors over time can be insidious, so that you don't immediately notice when they move from name-calling to insults, to personality annihilation, to contempt, to full-blown emotional threats and/or physical attacks.¹³

Dr. William Bernet notes in his book, Parental Alienation (DSM-5, and ICD-11), as to parental alienation and Parental Alienation Syndrome (PAS) and our judicial system's view of these matters that:

. . . the silence of DSM over the years has resulted in inconsistent rulings regarding parental alienation in many jurisdictions (Lorandos, 2006a). This is a serious problem because consistency is one of the foundations of the public's trust in the law. A society must have clear, consistent guiding principles. Many courts, clearly uncomfortable when faced with DSM's silence regarding parental alienation and PAS, have found ways to rule on cases while totally ignoring the most important question that is before them. When courts choose to address the issues of parental alienation and PAS, there is no consistency in their rulings. When there is no standard of scientific agreement, courts may base their decisions on personal prejudices and biases.¹⁴

What constitutes indicia of parental alienation?

- Speaking of the other parent in negative terms (always, not occasionally)
- Urging the child to scout information at the other parent's home
- Admonishing the child that the other parent should not be given respect, courtesy or affection

¹² R. Kreger and P. Mason (2010) Stop Walking on Eggshells.

¹³ M. Fjelstad and J. McBride, *supra* at 151.

¹⁴ W. Bernet (2010). Parental Alienation (DSM-5, and ICD-11 at 105.

In New York a series of cases note that: “Parental alienation of a child from the other parent is an act so inconsistent with the best interests of a child as to, *per se*, raise a strong probability that the offending party is unfit to act as custodial parent”.¹⁵

In Texas, in In Re Eddins, the Fifth Circuit Court of Appeals in considering a mandamus described a parent’s behavior as perhaps vile, but concluded that the behavior did not constitute parental alienation. In the Eddins’ case, the parties had two children. The parties ultimately entered into a mediated settlement agreement, finalizing their divorce via entry of an agreed decree on November 5, 2015. The parties were appointing joint managing conservators, with Jalane being appointed as the parent who had the exclusive right to establish the children’s primary domicile, subject to geographic restrictions. The children’s father, Mark, was granted access pursuant to the Standard Possession Order, and had the duty and obligation to pay child support, and \$13,000 per month in additional expenses. Mark subsequently married Audrey George – his fifth wife. Less than one year after finalization, Mark filed an enforcement proceeding, and a petition to modify, although he simply asked for equal periods of possession and requested certain forms of relief related to facilitating communications and exchanges of possession of the children. The parties entered into certain agreements following the filing of these actions. Mark subsequently amended his petition for enforcement three times. In the third amendment, Mark alleged that Jalane had violated terms of the Decree dating back to December 10, 2015.

Specifically, Mark complained of Jalane's alleged conduct including failure to surrender the children on December 10, 2015 and March 4, 2016, multiple vulgarity-laden text messages Jalane sent to Mark privately in November and December 2015, a verbal exchange where both Mark and Jalane cursed in the presence of the children at the

¹⁵ Doroski v. Ashton, 99 A.D.3d 902 (2d Dept. 2012); Bennett v. Schultz, 110 A.D.3d 792 (2d Dept. 2013); Avdic v. Avdic, 125 A.D.3d 1534 (4th Dept. 2015); Halioris v. Halioris, 126 A.D.3d 973 (2d Dept. 2015)

December 10, 2015 exchange, Jalane's surveillance of Mark at a May 21, 2016 baseball game, and three remarks Jalane made in May and July 2016 about Mark and Audrey.¹⁶

Mark hired a private investigator to accompany him at the December 10, 2015 exchange of the children at Jalane's home. Mr. Cox parked on a private, gated drive outside of Jalane's home, while the children were horseback riding in the riding. Mr. Cox's actions frightened Jalane. She asked him to leave her property, and he refused. Mr. Cox videotaped the parties' interactions; incensed, Jalane asked Cox to cease and desist recording, hit the iPhone he was using to record, and knocked the phone out of Cox's hand. Mark had hired a private investigator, Glen Cox, to witness the exchange of the children. Jalane had the children prepared to leave with their father, but the children refused to accompany him when he refused to confirm that Although Jalane had the children ready and waiting to go with Mark, the children refused to go with Mark on December 10, 2015 as their father refused to confirm that he alone would spend time with them, independent of Audrey George. The children again refused to leave with their dad on March 4, 2016. Mark's enforcement action complained about several of Jalane's text messages, and disparaging remarks that were memorialized in videotapes, including the allegation that Jalane said "don't let Audrey be mean to the kids" on May 26, 2016. On another occasion, following a rodeo event, Jalane purportedly asked a police officer to check whether Audrey and Mark had been drinking prior to releasing the children to him.

In his third amended enforcement, Mark repeated these allegations at the October 24, 2016 hearing, requesting that Jalane be held in contempt for violating the divorce decree. Mark's position was that the children's mother was verbally abusive toward him in person and via text

¹⁶ In Re Eddins, 05-16-01451, ____ S.W. 3rd ____, (Tex.App. 2017, memorandum opinion).

and voicemail, and that she was alienating the children from him. Mark requested that Jalane be found in contempt and that he be granted an award of legal fees.

Nothing in the pleadings, prior to October 24, 2016, alleged that modification of the existing orders was needed because the children's present circumstances would significantly impair the children's physical health or emotional development. Neither of the active pleadings (enforcement/modification) included the type of supporting affidavit required by Texas law pursuant to TEX. FAM. CODE ANN. § 156.006 (West Supp. 2016); *id.* § 156.102 (West 2014). Nonetheless, at the conclusion of the hearing, the visiting trial judge held Jalane in contempt and ordered "immediate and exclusive possession to the father with exclusive rights, power, and duties until further orders." In fact, the judge indicated on the record to Mark's attorneys that she was calling for a report back several days later and hoped by that time that his would again amend their pleadings to allow for the type of relief granted. Between the trial judge's arbitrary removal of the children from Jalane's care, and the parties report back to the Court, Mark did amend his pleadings, seeking sole managing conservatorship of the children, and requesting the ability to have the exclusive right to establish the children's primary residence.

An evidentiary hearing was held on October 28, 2016.

At the hearing, the trial judge told the parties that the hearing was needed because the testimony she heard at the prior hearing 'does rise to the level of emotional harm [to the children].' The witnesses who testified at this hearing did not opine on whether the children's present circumstances would significantly impair or endanger the children's physical health or emotional development. The children's counselor testified that both children, and predominantly the preteen daughter, view Mark as all bad and Jalane as very good, and that the children spend more time with Jalane and had adopted more of Jalane's thoughts and opinions. But she also testified that both Mark and Jalane had shared too much information about the cause of the divorce and post-divorce proceedings with the children. Jalane admitted that she had acted inappropriately at some of the exchanges, but she also testified that she believed her responses to the children's questions and her reactions to Mark's private investigators were appropriate. There was testimony that

Audrey acted aggressively toward Jalane and the children at rodeo events and during the children's visits with Mark. Jalane also testified that after Mark met Audrey, he stopped being supportive of the children's rodeo competition activities and sometimes would not let them attend rodeo events when he had them for visitation. Jalane testified that part of the reason the children were angry with Mark was because he was trying to keep them from competing in the rodeo events that Mark agrees are the children's passion.

At the end of the hearing, the trial judge criticized Jalane for her testimony that Jalane believed her reaction to Mark's private investigator at the December 10, 2015 exchange was appropriate. She also stated that Jalane has 'given these children no permission to love their father, and you think it's okay to let them know that.' She then found that the temporary order making Mark sole managing conservator and making him the party with the exclusive right to determine the children's primary residence was in the children's best interest because leaving the children with Jalane 'would ensure that they would not have a relationship with the father. Accordingly, they would be — impair their physical or emotional development.'

On December 1, 2016, the trial judge signed temporary orders changing the custody provisions, enjoining Jalane from contact with the children, and giving Mark the exclusive right to designate the children's primary residence. The trial judge found that court intervention was needed because Jalane "is consciously or unconsciously preventing and undermining the relationship between" the children and Mark, the children and their stepmother, and "such alienating behavior is detrimental to the short and long term emotional health of the children." The trial judge also ordered a child custody evaluation. The trial judge signed a separate order holding Jalane in contempt for failing to comply with the agreed final divorce decree and awarding Mark attorney's fees and costs. The contempt order included changes to custody, including giving Mark immediate possession of the children "to the exclusion of" Jalane, and giving Mark the exclusive right to designate the children's primary residence. The contempt order also included the court's finding that 'the children's present environment may endanger the children's physical health or significantly impair the children's emotional development.'¹⁷

Jalane filed *mandamus*. The Fifth Circuit noted that:

Further, while a suit for modification is pending, a trial court may not generally render a temporary order that has the effect of changing the designation of the person who has the exclusive right to designate the child's primary residence under the final order. *Id.* § 156.006 (West Supp. 2016); *id.* § 156.102 (West 2014).

Section 156.102 applies only if the motion to change the person having the exclusive right to designate the primary residence is filed within one year of the earlier of:

- The date of the order sought to be modified, or

¹⁷ *Id.*

- The date the mediated settlement agreement was signed that lead to the order sought to be modified.

Id. Section 156.006 and section 156.102 apply slightly different standards for determining whether a temporary order changing who has the exclusive right to designate the child's primary residence is proper. Under section 156.006, the trial court may enter such an order only when doing so is in the best interest of the child and the child's present circumstances would significantly impair the child's physical health or emotional development. *Id.* § 156.006. Under section 156.102, the temporary order is permitted only if "the child's present environment may endanger the child's physical health or significantly impair the child's emotional development." *Id.* § 156.102(b)(1).

Under either section, however, the party seeking the temporary order must attach an affidavit to the motion that contains facts that support the allegations regarding the children's present circumstances. *Id.* § 156.006(b-1) (the affidavit must contain 'facts that support the allegation that the child's present circumstances would significantly impair the child's physical health or emotional development. '); *id.* § 156.102(a), (b) (the affidavit must contain 'along with supporting facts' an allegation that "the child's present environment may endanger the child's physical health or significantly impair the child's emotional development').¹⁸

Relief had been granted without a supporting affidavit notwithstanding Texas Family Code § 156.102(c) (emphasis added); *id.* § 156.006(b-1), providing that "The court shall deny the relief sought and decline to schedule a hearing on the motion unless the court determines, *on the basis of the affidavit*, that facts adequate to support the allegation are stated in the affidavit.") (emphasis added). Any error could be harmless, if the testimony reflects that the child's present environment might significantly impair his or her physical health or emotional development. *In re C.G.*, No. 04-13-00749-CV, 2014 WL 3928612, at *3 (Tex. App.-San Antonio Aug. 13, 2014, no pet.) (mem. op.).

The appellate court found that Mark did not request temporary conservatorship orders in his motion for enforcement, the only matter scheduled for hearing on October 24, 2016. The visiting judge's temporary conservatorship orders were unsupported by the pleadings, rendered

¹⁸ *Id.*

without the notice required by the Texas Family Code, and the appellate court ruled that said orders were void. TEX. FAM. CODE ANN. § 105.001(a), (b), (h). As the visiting trial judge also designated Mark as the person who had the exclusive right to designate the child's primary residence without a supporting affidavit as required by sections 156.006 and 156.102 before such a change may be made, the appellate court ruled that that verbal order was void.

As the visiting trial court judge issued written temporary orders *following* Mark's amendments to his motion, only then attaching an affidavit, the appellate court ruled that Jalane had notice of the amended motion and of the October 28, 2016 hearing, finding that the December 1, 2016 written orders were not void for lack of notice. The appellate court also ruled that "the evidence presented at the hearing did not rise to the level of establishing substantial impairment of the children's physical health or emotional development".¹⁹

Not all parental alienation supports a finding of significant impairment.

See, e.g., In re C.S., 264 S.W.3d at 874-75 (distinguishing cases where allegations indicating pattern of parental alienation were insufficient to support finding that children's present environment might endanger their physical health or significantly impair their emotional development from one case finding significant impairment based in part on clinical psychologist's report that significant impairment would result; concluding as matter of law record of parental alienation was insufficient to support significant impairment). At most, the evidence showed a dysfunctional relationship between Mark and Jalane, violations of the divorce decree's communication provisions, inappropriately angry and negative exchanges between Mark and Jalane, sometimes in front of the children, and conduct that the trial court viewed as Jalane alienating the children from Mark but about which no witness, not even the children's counselor, expressed that opinion. Indeed, Mark asserted that there were only two instances where he was unsuccessful obtaining the children at an exchange. This record is insufficient to support the wholesale change in custody made here and changing the parent with the right to designate the children's primary residence. *In re C.S.*, 264 S.W.3d at 874-75; *In the Interest of C.G.*, 2014 WL

¹⁹ *Id.*

3928612, at *3. Based on this record, we conclude the trial judge abused her discretion in issuing the temporary orders.²⁰

While the Fifth Circuit directed that the trial court vacate its December 1, 2016 temporary orders, the trial court did not comply. Years of litigation, supervised access, counseling and discord followed. Ultimately, the parties opted to arbitrate issues, rather than bringing their case back to the trial court.

While parental alienation is not specifically cited in the DSM-V as a disorder, parental alienation is addressed in three diagnoses that are covered in the DSM-V²¹, to wit:

1. Parent-child relationship problem (V61.20)
2. Child affected by parental relationship distress (V61.29) and
3. Child psychological abuse ((995.51).

To capture information via SEO searches on parental alienation, one must be willing to search for information related not only to parental alienation, but on the following terms: “psychological child abuse, gatekeeping, family violence, social influence, and persuasion”.²²

Paul Tillich taught that doubt is an inherent element of true faith; however, without counseling, an alienated child rarely expresses doubt. The alienated child is triumphant and self-righteous. The alienated child is mean, proudly disparaging the rejected parent. Brainwashing may be a factor; critiques of rejected parents may be manufactured. The children so rant, the rejected parent is given little opportunity to set the record straight. Exacerbating the child’s conduct is the errant parent with whom the child aligns. Such a parent all too frequently plays on the child’s guilt, or simply pretends that the rejected parent has not or does not call to check on or to speak with the child. Alienators are obstructionists – from interfering with the rejected parent’s ability to interact not only with the child, but with the child’s teachers, coaches and

²⁰ *Id.*

²¹ *American Psychiatric Association (2013). Diagnostic and Statistical Manual of Mental Disorders (5th ed.) (DSM-V)* at 615-716, 719.

²² Richard A. Warshak. *Current Perspectives on Parental Alienation* in PSYCHOLOGICAL EXPERTS IN DIVORCE ACTIONS, (7th ED.) (Marc J. Ackerman, Jonathan Gould, & Andrew W. Kane, eds., 2021).

friends. Birthday party during your weekend? Nope. No invitation provided to the other parent with possessory rights. An alienator will be quick to tell the child they could have gone to that wonderful party, but for the rejected parent not being kind enough to take the child to the party (rather than admitting that the alienating parent failed and refused to provide the invitation to the rejected parent).

Studies have been conducted worldwide on the phenomena of parental alienation. Judith Wallerstein and Joan B. Kelly in 1976 identified what they termed “pathological alignment” that can occur in a family experiencing divorce.²³ In a follow up book, *Surviving the Break-Up: How Children and Parents Cope with Divorce*, the authors did a study of 60 families of divorce in Northern California. Dr. Benet notes that Wallerstein and Kelly “referred to an alliance between a narcissistically enraged parent and a particularly vulnerable older child or adolescent” who aligned with and as an ally to one parent in that parent’s efforts to punish the other parent post-divorce. That might translate to turning against the parent with whom the child had been close to prior to the divorce.²⁴

In 1989, Judith Wallerstein and Sandra Blakeslee published a follow up to the original study, entitled *Second Chances: Men, Women and Children a Decade After Divorce*. While the authors refrained from use of the term parental alienation, they nonetheless note that court-ordered visitation may “be entangles with Medea-like rage,” noting that:

A woman betrayed by her husband is deeply opposed to the fact that her children must visit him every other weekend.... She cannot stop the visit, but she can plant seeds of doubt by the way she acts and the questions she asks . . . Fathers in similar circumstances make use of techniques congenial to them, often conveying to the boy or girl that the mother is depraved or dangerous.²⁵

²³ Judith Wallerstein and Joan B. Kelly, Ph.D., **THE EFFECTS OF PARENTAL DIVORCE: Experiences of the Child in Later Latency** *AMERICAN JOURNAL OF ORTHOPSYCHIATRY* [THE EFFECTS OF PARENTAL DIVORCE: - Wallerstein - 1976 - American Journal of Orthopsychiatry - Wiley Online Library](#)

²⁴ William Benet, M.D., *supra* at 25.

²⁵ Judith Wallerstein and Sandra Blakeslee. 1989. Second Chances: Men, Women and Children a Decade After Divorce.

Roland Summit opined in *The Child Abuse Sexual Abuse Accommodation Syndrome* that:

Initiation, intimidation, stigmatization, isolation, helplessness and self-blame depend on a terrifying reality of child sexual abuse. Any attempts by the child to divulge the secret will be countered by an adult conspiracy of silence and disbelief. 'Don't worry about things like that, that could never happen in our family.' 'How could you ever think of such a terrible thing?' 'Don't let me ever hear you say anything like that again!' The average child never asks and never tells.'

Parental alienation, when severe, includes many forms of emotionally abusive behavior. Unfortunately, the very parent accusing another of alienation may in fact be an alienator. The accuser can project their own acts and omissions onto the other parent, making for a complicated case, and children who are caught in the middle. In The Body Keeps the Score, Dr. Bessel Van Der Kolk discusses a study, in which a study group comprised of children who had suffered some form of abuse, versus other children who had not been abused, were shown relatively benign pictures (such of a pregnant woman in silhouette) and then asked to react to the pictures that:

...despite their alertness to trouble, the children who had not been abused still trusted in an essentially benign universe; they could imagine ways out of bad situations. They seemed to feel protected and safe within their own families. They also felt loved by at least one of their parents, which seemed to make a substantial difference in their eagerness to engage in schoolwork and to learn. . . The responses to the clinic children were alarming. The most innocent images stirred up intense feelings of danger, aggression, sexual arousal, and terror. . .we could only conclude that for abused children, the who world is filled with triggers. As long as they can imagine only disastrous outcomes to relatively benign situations, anybody waling into a room, any stranger, any image, on a screen or on a billboard might be perceived as a harbinger of catastrophe.²⁶

Sometimes alienation is subtle rather than overt. Alienators are adept at *topos* – a rhetorical contrivance referencing what the alienator could share, but propriety keeps them from doing so – though through allusion, the alienator nonetheless casts stones at the rejected parent. By mentioning the

²⁶ Bessel Van Der Kolk (2014) The Body Keeps the Score: Brain, Mind, and Body and The Healing of Trauma at 110.

unmentionable, the message is still conveyed. For instance “someday, when you are old enough to understand, I will tell you stories about your mother that will make the skin on the back of your neck crawl, and then you will understand why I had to leave her”. If one parent demands that the other parent park his or her vehicle a certain distance away, or stand on different portions of the soccer field at a child’s game, the parent issuing such edicts is sending a subliminal message of distrust. Alienation may also be driven by having ceding too much power to a child – like whether or not a child has to comply with court orders regarding visitation or access. If encouragement takes the form of one parent saying to a child “you have to go see your mother, or she will take us back to court again”, it does little to endear mama to the child. Revenge may be sweet – unless a child is caught in the middle.

The *sine qua non* of an alienated child is that the child pulls back emotionally from a parent and sometimes physically. This can occur in various degrees. The child may spend time in the parent’s care but refuse to engage meaningfully with the parent – remain withdrawn, rebuff the parent’s attempts to communicate, interact, or share enjoyable activities (even meals), scorn expressions of affection, and treat the parent with utter contempt.²⁷

Telling a child that he or she is behaving just like the maligned parent does little to engender love – if anything, it is a passive aggressive means of reinforcing the undesired conduct.

2. Battling Parental Alienation

Can a relationship be maintained in spite of conflict? Divorce can be accomplished neatly and kindly, keeping trauma to a minimum. There are others who experience divorce as one would experience the trauma of losing a limb, taking a toll emotionally, financially, and in other ways as well. Can individuals who have severed their relationship co-parent? Or are those who have dissolved their relationship, but who are bound by children, destined to do battle?

There are innumerable battlefronts available to the conflict-oriented, most of which are abusive to one or both parties and the children. Often, the problems created by the conflict also hurt the perpetrator, who is taken down with the target parent.

The continuation of the relationship in its new form as a denouement of the marriage is often more lethal to children than actual separation and divorce because no child is completely insulated

²⁷ Warshak, *supra.*

or immune from the ongoing conflict. Therefore, acceptance, adjustment, and healing remain beyond reach for many children, especially those who are incorporated into angry conflicts.²⁸

Must every case involving parental alienation become a lifetime case at the courthouse with the potential of adversely impacting the children caught in the middle? Or involve reunification therapy? If parties are willing to cooperate, there may be different paths that lead to conflict resolution. John A. Moran, Ph.D., Shawn McCall, PsyD, Esq., and Matthew Sullivan, Ph.D. recently published: *Overcoming the Alienation Crisis: 33 Coparenting Solutions*²⁹ in which they discuss the differences innate to an “escalated co-parent” as opposed to a “neutral coparent.” The contrast is simple, but one must realize that the parties may vacillate, and be escalated in one situation and neutral in another. Moran and his colleagues chart common distinctions in behavior as follows:³⁰

Escalated Coparent

Neutral Coparent

Being right is top priority -----Emotional regulation is top priority

Uncontained stress-----Self-soothing, detachment

Accuses, blames, threatens-----Takes responsibility for their behavior

Withdraws from communication-----Seeks clarification of issues

Polarized thinking -----Uses relative terms such as “likely” or “may”

Overconfidence in own ideas-----Assumes there is more to be known

²⁸ Stanley S. Clawar and Brynne V. Rivlin (2013) *Children Held Hostage* (2d ed) 107.

²⁹ *Supra* at 75.

³⁰ *Id.*

Sometimes folks simply find it impossible to leave the past behind. As Mark Wolynn notes in It Didn't Start With You³¹:

The notion that we inherit and 'relive' aspects of family trauma has been the subject of many books by the renowned German psychotherapist Bert Hellinger. Having studied families for more than fifty years, first as a Catholic priest and later as a family therapist and philosopher, Hellinger teaches that we share a family consciousness with our biological family members who come before us. He has observed that traumatic events, such as the premature death of a parent, sibling, or child or an abandonment, crime, or suicide, can exert a powerful influence over us, leaving an imprint on our entire family system for generations. These imprints then become the family blueprint as family members unconsciously repeat the suffering of the past.

By contrast, in Parenting in the Smart Zone, Susan Fletcher observes that:

What about the hassles of parenting? Keith Crnic, Ph.D., head of the Department of Psychology at Penn State does research on parenting. He describes 'daily parenting hassles' as routine caregiving and child-rearing responsibilities that parents may find irritating, frustrating, annoying, and distressing. In his research, he found that high levels of daily parenting hassles relate to lower levels of life satisfaction, frequent negative moods, and increased maternal distress. Daily parenting hassles have been found to be even more stressful to parents than major life events. It is also known that the availability of a social support network can moderate the effects of stress in parenting.³²

Said differently, the pressures of terminating a relationship can be tremendous, with children of the relationship finding themselves caught between two people who once loved each other, and who profess to still love the child. Will adults always put their children first? No. In that instance, should children be allowed to decide what is best? Ashish Joshi opines that:

We generally do not trust children to make judgments in their best interests. In an alienation situation, the need for caution is even greater. Under the influence of an alienator, the affected child may not be cognitively or psychologically able to make a judgment in his or her best interests. Courts recognize that in an alienation setting, children 'are impressionable, have social deficits, and could be manipulated. The professional standards that apply to lawyers who represent children in such cases also underscore this concern:

One of the most difficult ethical issues for lawyers representing children occurs when the child is able to express a position and does so, but the lawyer believes that the position chosen is wholly inappropriate or could result in serious injury to the child . . .

³¹ Mark Wolynn (2017) It Didn't Start With You 44.

³² Susan Fletcher (2005) Parenting in the Smart Zone 45.

A child may desire to live in a dangerous situation because it is all he or she knows, because of a feeling of blame or . . . because of threats or other reasons to fear the parent.

In an alienation case, a GAL or child's representative must strive to assess whether the child's wish is the result of brainwashing or programing by the alienating parent or his or her own independent judgment, prior to making a recommendation to the court or advocating in favor of the child's wish. The professional must determine whether the child is psychologically able to make a judgment; and whether the child is able to exercise his or her judgment without influence, coercion, manipulation, or exploitation. (Citations omitted).³³

Mr. Joshi suggests analyzing the facts of a given case bearing in mind the following regarding the acts or omissions of the other parent and of the parties' children:

- (a) The behavior is chronic rather than temporary and short-lived;
- (b) The behavior is frequent rather than occasional;
- (c) The behavior occurs in most situations rather than only in certain situations;
- (d) The behavior occurs without displays of genuine love and affection toward the rejected parent;
- (e) The behavior is directed at only one parent;
- (f) The behavior does not reflect typical dynamics for the child's state of development;
- (g) The behavior is disproportionate to, and not justified by the rejected parent's past or current behavior.³⁴

Joshi also opines that even experienced professionals can be fooled when it comes to parental alienation, to wit:

. . .time and again, when we review family court cases, we see professionals—guardians ad litem, minors' counsel, parenting coordinators, evaluators – give significant weight to preferences of alienated children. We observe that alienated children's rejection of the targeted parent and their excuses to not abide by court-ordered parenting time are not only condoned – rather the professionals recommend that the target parents show 'empathy' and *not* seek enforcement with court orders. We frequently see the well-meaning professionals attempt to manage these cases by relying on their intuition and make recommendations along the lines of: *Your child needs some space. By attempting to enforce your parenting time, you will only succeed in driving her further away be patient.*

Such professionals *enable* alienation by valuing personal opinion, ideology, or experience over research evidence and create a vicious cycle and nefarious incentives for the alienating parent to continue to manipulate and influence his or her child's position. Moreover, now the alienating parent has an important ally: the professional, who may be a quasi-judicial authority such as the guardian ad litem or a court-appointed evaluator. And if this professional advocates

³³ Ashish Joshi (2021) Litigating Parental Alienation: Evaluating and Presenting An Effective Case In Court 120.

³⁴ *Id.* 160.

for the favored parent to have custody because the ‘voice’ of the alienated child must be heard and respected, the alienating parent in effect has two lawyers in the courtroom – his or her own and the professional.

We generally do not trust children to make judgements in their best interests. In an alienation situation, the need for caution is even greater as the affected child may not be cognitively or psychologically capable to make a decision in her best interests.³⁵

While Richard Gardner may have initially suggested that many parental alienation cases primarily involve the mother as the instigator or alienating parent, he later modified his view to mothers and fathers potentially being equally involved in alienating behaviors. In a recent AFCC-AAML Conference³⁶, Dr. Michael Saini and Louise Truax, Esq., outlined the following goals in counseling when parental estrangement and/or parental alienation have risen to the point of mandating reunification therapy for the various players. Part of the examination of the reunification therapist should be to assess if they established goals such as those listed at the outset of therapy, and attained them in a given case, or, by contrast, if the attitude of the favored parent prohibited any measurable means of success:

³⁵ *Id.* 161.

³⁶ Michael E. Saini, Ph.D. and Louise Truax, Esq. (2021) AFCC-AAML FALL CONFERENCE. Refuse/Resist cases: Getting the Mental Health and Legal Communities to Speak the Same Language 54-56/

Goals for 'Favored' Parent

Prepare	<i>Prepare child for therapeutic work</i>
Establish	<i>Establish age appropriate boundaries for child</i>
Support	<i>Support child to engage in therapeutic work, build child's confidence in managing fears and concerns</i>
Manage	<i>Manage own affect regulation</i>
Identify	<i>Identify their own feelings of hurt, mistrust, rejection, and specific triggers that set off conflict and separate these from the child's needs for a relationship with other parent</i>
Recognize	<i>Recognize cognitive distortions and see things from multiple perspectives</i>

Individual Goals for 'Rejected' Parent

Understand	Understand complexity of problem, refocus "blame" – not only alienation
Acknowledge	Acknowledge own contributions, deliver apologies where appropriate
Learn	Learn healthy, functional and appropriate parenting skills
Develop	Develop effective ways to self-regulate, regulate affect, maintain emotional composure
Set	Set realistic expectations
Identify	Identify individual triggers, manage own behavior

Co-Parenting Goals

Setting up communication and information sharing protocols

Setting up behavioural engagement protocols

Learn how courts and legal system are not the answer to family systems problems

Encourage and support cooperative or parallel parenting process.

Individual Goals for Child

Develop a healthy relationship with both parents.
Improve child's relationship with rejected parent.
Minimize involvement in parenting conflict.
Reduce the child's cognitive dissonance, polarized and negative stereotypic thinking and attitudes about the rejected parent.
Improve the child's coping and critical thinking skills (e.g. communication, problem solving and conflict resolution skills)
Manage anxiety and reduce anxiety phobic qualities.

Ashish Joshi adds several pointers for prepping for litigation that includes parental alienation as a component part:

1. First, do no harm.

2. Check for and challenge your biases.
3. Keep yourself abreast of the latest research, publications and peer-reviewed literature.
4. Frame the case properly.
5. Get ready to debunk the most commonly held fallacy of parental alienation cases – the ‘high conflict’ model.
6. Don’t use the term ‘parental alienation’ lightly.
7. Parental alienation cases are ‘won’ (if that’s the right word for these heart-wrenching cases) through meticulous and careful preparation.
8. Build a detailed chronology.
9. Learn to manage the clients.
10. Think about using a parenting coach to help the client.
11. Select the right expert (cover the three Ss of parental alienation: symptoms of alienation, behavioral strategies of alienators, and the sequelae of parental alienation in the lives of the children affected).
12. Consider the necessity and helpfulness of a forensic evaluation.
13. Prepare the client for the forensic evaluation.
14. Help the client prepare a package of well-organized documents for the evaluator’s review.
15. Counsel the client to follow court orders and show respect towards the court and legal process.
16. Understand that time is the enemy.
17. Be mindful of the unjust criticism of the judiciary in cases involving parental alienation.³⁷

Dr. Richard Warshak acknowledges that counselors working with alienated children are traversing relatively new territory, to wit:

Compared with traditional psychotherapy for non-forensically related children’s problems, such as depression and anxiety, working with alienated children and their parents is an emerging area of practice. As such, the professional community may lack sufficient knowledge about the procedures and long-term outcomes of these services. This leaves professionals vulnerable to complaints that their services, whether to prevent or alleviate alienation, lack empirical support and general acceptance. The risk of such complaints is mitigated by using approaches that are informed by concepts derived from empirical research, professional knowledge, and professional experience as well as by adhering to professional guidelines.³⁸

³⁷ Id., 232-264.

³⁸ Richard A. Warshak, (April 2020) *Risks and Realities of Working with Alienated Children*. FAMILY COURT REVIEW, Vol. 58, No. 2 at 437.

3. Staying out of the courthouse

Can parents avoid the courthouse? If they are rational, empathetic, and willing to communicate they can put the resources they might expend on litigation toward other things, like counseling or their children's college funds. The following admonitions may help.

1. Keep communications brief and business like, limiting the number of messages in a day.
2. Respond to emails and/or phone calls within two days unless the underlying request is time sensitive.
3. Address matters pertaining to the child, including a proposal of how to address a potential problem. Make like a journalist, and address who, what, when and where.
4. If inaccurate accusations are made, issue a disclaimer "I don't agree with what you've written, but I'm not going to address those differences right now. I will address some of the things you expressed that relate to coparenting." If possible, find a point that can be agreed to.
5. If missives appear to be coming from a parent's new partner, address the difference in tone.
6. Consider requesting an in-person meeting to discuss things.
7. Consider accessing data directly, rather than treating the other parent as a conduit of information. Divorce decrees, parentage orders, and orders in suits affecting the parent child relationship often give each conservator the right to access medical, dental, psychological and educational records. Contact schools, doctors, dentists and counselors. Ask to be kept apprised of status. Consider sending a stack of self-addressed, stamped envelope, and asking that a note be made to the child's file to please forward copies of all pertinent documentation to the requester.
8. Health insurance cards – the parent maintaining dependent coverage should provide a proof of insurance card to the other parent in a timely fashion. This should not be a source of debate. The insurance company will provide a proof of insurance card to the person paying policy premiums; on receipt, that parent should send the proof of insurance card issued by the carrier to the other parent. Not a copy. A real proof of insurance card.

9. Maintain confidentiality – information about a divorce, separation, or related family law matter should be maintained in a safe location, to which children made the subject of such matters DO NOT have access.
10. Don't insult or derogate the other parent, even if they insult or derogate you.
11. Children sometimes tell one parent that they do not enjoy spending time with the other parent. You can address those observations without straining the parent-child relationship. Moran suggests that a neutral parent does the following³⁹:
- Listens carefully.
 - Empathizes that the child's relationship with the resisted parent is hard right now
 - Accepts they really cannot know what really happens at the coparent's house
 - Reinforces the child's resilience and ability to cope
 - Never expresses doubt about the coparent
 - Supports the child talking directly with the coparent, and if possible, works with their coparent in a collaborative manner to address the child's expressed concerns
12. New partners/step-parents: what if a child claims they simply despise their mother or father's new life partner? A neutral parent will try to de-escalate and act as peacemaker. A neutral parent will tell the child that not going to the other parent's house is simply not an option. Being a parent is a tough but fulfilling job; being a step-parent can be quite difficult. Fairytales do step-parents no favors. Almost every step-parent is depicted as evil in fairytales. As the Hon. Susan Rankin Whittington observed to this author years ago "if only there was no such word as step-parent. If only a step-mother could be labeled 'favorite aunt!'" Try to find the good in the new life partner.
13. If a child threatens to run away or to engage in self-harm, listen. An escalated coparent may "overestimate the severity of the threat."⁴⁰ A parent may unwittingly escalate the situation by

³⁹ *Id.* at 88.

⁴⁰ *Id.* at 96.

seeking to enforce the court order or by involving the police. Things may have reached the point that court intervention and or reunification therapy are needed. Parents often expend vast amounts of resources (time, money, emotion) on such matters. Counseling, legal fees and court costs can eclipse what a parent expends on a child's college education or first home.

14. What if the child won't get in the car? Talk to the child about respecting the court's orders. Give the child consequences for being oppositional. Calm the child. Parents should talk to each other, and to the child, about the importance of having contact with both parents.
15. Check voicemail and email at least once per day. Be prompt in responding. Telephone and digital contact should be maintained between parents, and between the parents and their child(ren).
16. Children absenting themselves during a visit – use a minimal amount of parenting authority to correct misbehavior and/or abstention. It is quite natural for a child to retain hope that his or her parents will reconcile. It is also quite natural for children to reject a parent's new life partner in what the child perceives as solidarity with the favored parent. Try to get the child to participate, even if it means giving in on a general rule, such as eating an alternative to what is served for dinner that evening, especially if giving the child a bit of leeway brings them to the dinner table with the rest of the family.
17. Extended family: a neutral coparent often maintains contact with an ex's extended family. This teaches the children respect and the importance of family. It's a wonderful peacemaking gesture, intended to maintain family continuity. Pictures speak one thousand words – share pictures with extended family members.
18. Each parent should have a picture of the other parent in the child's room in their home.
19. Each parent should have a change of clothing, shoes, personal hygiene items, games and books for the child in their home.
20. Refusal to enjoy gifts from rejected parent or the rejected parent's extended family: these are learning moments for developing compassion and acknowledging generosity. There may also be moments for practicing gratefulness and forgiveness. Children often feel compelled to be a parent's

champion – instead of rejecting a gift, the situation can be reframed, as an opportunity to show the child that the gift giver cares about them.

21. Respect boundaries. You do not need to know everything that happens at the other parent's home.

Teach respect – inquire neutrally, if at all.

22. Notwithstanding boundaries, work with the children to teach them to honor the other parent (holidays, birthdays, Mother's Day/Father's Day).

23. Fear of inappropriate behavior at the other parent's home should be met with calm, open ended questions. If a parent was a sexual addict or porn addict or drug addict or alcoholic, and a child comes home describing inappropriate behavior, don't ask leading questions that could elicit confirmation bias. Ask open ended questions; present the child to a pediatrician or counselor for assessment if there is a bona fide concern of physical, sexual or emotional abuse.

24. Hold your temper and judgment.

25. Accept children – don't reject them, even if they are abusive as a result of being alienated.

26. Consider a parenting coordinator or parenting facilitator might help improve communications between parents.

27. Consider family counseling.

28. Think of the lyrics from South Pacific⁴¹, *You've Got To Be Carefully Taught*

You've got to be taught

To hate and fear,

You've got to be taught

From year to year,

It's got to be drummed

In your dear little ear

You've got to be carefully taught.

You've got to be taught to be afraid

⁴¹ [South Pacific - You've Got To Be Carefully Taught lyrics | LyricsFreak](#). Rodgers and Hammerstein (1949).

Of people whose eyes are oddly made,
And people whose skin is a different shade,
You've got to be carefully taught.
You've got to be taught before it's too late,
Before you are six or seven or eight,
To hate all the people your relatives hate,
You've got to be carefully taught!

29. Teach love, not hate.
30. Practice what you preach: flexible thinking, manage emotions, moderate behavior and check yourself by establishing boundaries not only for others, but for yourself as well.
31. Consider whether an apology is appropriate – words can mend and bridge impasses.
32. Serve the best interest of children.

Fjelstad and McBride indicate that battles should be chosen wisely. Sage advice. They also opine:

1. Don't use your children as a sounding board.
2. Don't encourage your children to take sides.
3. Don't triangulate (i.e. don't use the children as messengers).
4. Don't fight with a narcissist or borderline (instead, be firm, calm, rational).
5. Don't lie, pretend or deny the truth to your children.
6. Don't blame your children for the NP/BP's reactions.
7. Don't make excuses for the NP/BP.
8. Don't expect adult behaviors from the children.
9. Don't make promises you cannot keep.
10. Don't take your anger out on the children.
11. Don't fall apart in front of the children.
12. Don't forget:
 - a. the NP/BP does have positive interactions with the children.
 - b. You're a powerful role model.

c. You do have choices.⁴²

If co-parenting does not work, parallel parenting remains an option. Accept that you may need to have distinct rules in your household, as opposed to the rules imposed in your ex-spouse's home. Communicate effectively as to emergency issues, but not daily issues. Rather than communicating in person, opt for communications via an electronic platform, such as OurFamilyWizard or some other type of structured platform that allows you to upload significant documents (receipts for health records for the children, as an example). The parent who has decision making authority needs to keep the other parent apprised – but there may be no need to communicate about decisions. Each parent grapples with daily issues presented in their own home. Traditions, rules, and expectations may differ between homes. Follow the terms of the Decree or modification order without any feeling of entitlement to variance. If a tie-breaker is needed on a given issue, consider working with a therapist, parent facilitator and/or parent coordinator. Each parent should expect to deal only with their own relationship with the children, rather than feeling the need to monitor the other parent's relationship with the children. Don't ask, don't tell, in terms of things that the child does in the other parent's home, or vice versa. Keep communications brief, informative, factual and friendly, per Bill Eddy's BIFF book. Personal information need not be shared.

II. Reunification Therapy

1. What Reunification Therapy Is Versus What Reunification Therapy Is Not

Dr. Stanley Clawar admonishes that reunification therapy is unique:

⁴² Fjelstad and McBride, *supra* at 133-140.

Reunification is a special type of intervention that is not, per se, psycho-therapy (clinical); it is not family therapy, nor is it any other type of the presently practiced (forensic) therapeutic interventions. This is important to know because many therapists who come from different schools of thoughts and methodologies are applying their particular brand of therapy to this social and legal dilemma – usually without much success.⁴³

Dr. Richard Warshak opines that if, as and when a family court finds that “a child’s rejection of a parent is unwarranted and not in the child’s best interests,”⁴⁴ there are four options to consider:

- (1) Award or maintain custody with the favored parent with court-ordered psychotherapy and in some cases case management.
- (2) Award or maintain custody with the rejected parent, in some cases with court-ordered, or parent-initiated therapy.
- (3) Place children away from the daily care of either parent.
- (4) Accept the children’s rejection of contact with the rejected parent.⁴⁵

Dr. Warshak refers to the first option above as “reunification” or “reintegration” therapy. The parent child relationship has been damaged, and it may require court orders to recapture normalcy in that relationship. Court orders may be enforceable by contempt if there is noncompliance. One alternative to the first option above is to increase the amount of time the children are to be in the possession of the rejected parent, often bringing access to a 50/50 ratio with the favored parent’s access. Dr. Warshak describes Option One as most effective if the alienation is not too severe; there is a coercive element, in that children are being forced to partake in the reunification therapy sessions.

Dr. Warshak describes the second option as “environmental modification” or “structural intervention”. The child is temporarily (or perhaps permanently) placed with the other parent. Some scholars view this as

⁴³ Stanley S. Clawar. *Parent-Child Reunification – A Guide to Legal and Forensic Strategies*. ABA (2020) at 2.

⁴⁴ Richard A. Warshak, *Family Bridges: Using Insights From Social Science to Reconnect Parents and Alienated Children*. FAMILY COURT REVIEW, Vol. 48 No. 1 (January 2010) at 50.

⁴⁵ *Id.*

child abuse, arguing that the forceful removal of the child and placement with the rejected parent (albeit while allowing limited contact with the favored parent) is tantamount to emotional abuse. Option Two is often employed when prior attempts to resolve the break in the parent child relationship have failed. Instead of being abusive, the ability to spend extended periods of time with the rejected parent sometimes promotes healing. Simply having time away from the favored parent's influence can bring the child to the realization that not everything that the favored parent has shared about the rejected parent is fair nor accurate.

Dr. Warshak describes Option Three as an alternative that can include placement in the home of a third party or in a residential facility. Concurrent with such a placement, there would be a gradual increase in the amount of time that the child and the rejected parent spend together. The idea is to minimize tensions and to teach the parties and their children to look for the good in one another, rather than pouring salt in old wounds.

“Option Four, where the court or rejected parent concludes that no resolution is possible or feasible without doing greater damage, occurs only as a last resort”.⁴⁶ As an alternative to cutting ties that bind is to simply take a break; to allow heightened emotions to calm, and to hope that as children mature, they begin to see and evaluate things for themselves. Dr. Warshak notes that:

The drawbacks of giving up are: the child and the favored parent may interpret this as parental abandonment; the child is encouraged to avoid rather than to manage conflict; the child's irrational beliefs about the rejected parent could be reinforced; and the child receives no help to better understand the relationship with each parent and to reduce the likelihood of future problems related to a loss of such magnitude.⁴⁷

Reunification therapy may be necessary if, as and when one parent loses contact or communication with a child; this therapeutic model provides a process of reintroducing the rejected parent back into the child's life. If a family unit has become fragmented, reunification therapy is employed to rehabilitate the family unit.⁴⁸ In such cases, a number of factors must be considered, including:

⁴⁶ *Id.* at 52.

⁴⁷ *Id.* at 53.

⁴⁸ S. Richard Sauber, et al. *Reunification Planning and Therapy*. In D. Lorandos, et al. *Parental Alienation: The Handbook for Mental Health and Legal Professionals* (2013) at 503.

- Whether the loss of contact between the parent and child may be due to abandonment versus obstruction (in other words, is this estrangement or alienation)
- Whether there is a history of abuse (physical, emotional, sexual; has the child been privy to domestic violence)
- Would reunification serve the best interest of the child?

Reunification Therapy may be entered into voluntarily, or pursuant to a court order, as a therapeutic intervention aimed at reunited and reconciling an estranged or alienated parent with their children. Resources remain limited, though Ashish Joshi's presentations on this topic are extraordinary.⁴⁹

What are the goals of reunification therapy?

1. Facilitate healthy child adjustments.
2. Teach coping mechanisms to the family members.
3. Correct distorted and/or polarized perceptions.
4. Provide the child with realistic perceptions of each parent.
5. Improve the child's healthy relationships with each parent.
6. Address divorce/modification stress.
7. Help the parties and the child establish boundaries.
8. Restore/build appropriate parenting, co-parenting, and parent child relationships.⁵⁰

These are noble goals. These noble goals are fraught with legal and ethical conundrums, as children are being coerced to counsel and to redeem broken parent child relationships. At some level, any child presented for treatment by a parent is being forced into the process, albeit if only because the parent transported the child to the session. Threats, sanctions and other coercive compliance techniques impact the therapeutic process. Dr. Warshak notes that:

⁴⁹ [Ashish Joshi \(familyaccessfightingforchildrensrights.com\)](http://familyaccessfightingforchildrensrights.com)

⁵⁰ Ashish Joshi. *Litigating, Parental Alienation: Evaluating and Presenting An Effective Case in Court*. ABA (2021) at 63.

.... professionals may be willing to work with some coerced children after taking into account factors such as the severity of the child's problem and the child's age. Thus, a therapist who believes that the loss of the ability to give and receive affection from a parent is not severe or tragic enough to warrant forced intervention, or does not believe that children over a certain age should be coerced by courts or parents into treatment, may have ethical conflicts about providing services to children in these circumstances.⁵¹

Periodically, one or both parents, and/or their children, remain so entrenched in inappropriate behavior and thinking, that it is necessary for the reunification therapist to pull in individual therapists for each party and for each child. Reunification therapy is not necessarily the subject of graduate study; the process of reunification therapy is difficult work. A counselor in this instance should have a subspecialty in forensics in order to understand the legal dynamics of the case, as well as how to analyze frequently hostile participants. A "regular" counselor, lacking experience with the dynamics of family litigation, reunification and forensics can be at a loss with a difficult patient, and can inadvertently allow the patient to undercut the process. For example, a "normal" counselor, lacking training in reunification therapy, who sees an adolescent patient, and can identify with the child, bond with the child, and then assert that the work needed is simply torturing the child (rather than understanding that in the process is painful; for the favored parent, there will always be resistance, and the favored parent will condone and contribute to their child's inappropriate fears and behaviors; for the rejected parent, the process never moves swiftly enough). If the child or one of the parties did suffer trauma, what is the toll?

Under extreme conditions people may scream obscenities, call for their mothers, howl in terror, or simply shut down. Victims of assault and accidents sit mute and frozen in emergency rooms; traumatized children 'lose their tongues' and refuse to speak. Photographs of combat soldiers show hollow-eyed men staring mutely into a void.

Even years later traumatized people often have enormous difficulty telling other people what has happened to them. Their bodies reexperience terror, rage and helplessness, as well as the impulse to fight or flee, but these feelings are almost impossible to articulate. Trauma by nature drives us to the edge of comprehension, cutting us off from the language based on common experience or an unimaginable past.⁵²

⁵¹ Warshak, *supra* at 54-55.

⁵² Bessel Van Der Kolk, *supra* 43.

Reunification may not always be successful. Reunification may not be appropriate if a parent is estranged due to sexual abuse, physical abuse and/or substance abuse. Bear in mind, however, that if a parent child relationship has been unsettled, there has likely been some type of abuse involved. The child may be being manipulated by a parent, and/or emotionally abused by a parent. Reunification therapy is not Cognitive Based Therapy. It is not Family Therapy *per se*. Reunification therapy does involve stages, including 1. Assessment; 2. Commitment and treatment; and 3. Reintegration. If a reunification therapist finds, in the course of assessment, that the respective parents perceive one another as Medusa and Satan, and worse, that the child has adopted their parents' scorn, there may be a need to pull in other professionals. If a parent child relationship has been so disrupted as to occasion reunification therapy, there may be a need for individualized therapy as well – for each parent, and for their children. Alienation often occurs on a spectrum, ranging from mild disdain for a rejected parent to complete rejection not only of the parent, but of everyone and everything connected with the scorned parent. Sadly, a rejected parent's best efforts may sometimes reinforce the estrangement.

A reunification therapist will meet with the rejected parent, with the favored parent, and with the children. The reunification therapist will give the children the opportunity to articulate their list of grievances to each parent – though inevitably, the list of wrongdoing is typically longer as to the rejected parent. The reunification therapist will try to move toward joint sessions, although there may be concurrent individual sessions. The therapist must be acutely aware of body language, eye contact, and speech – is there an attempt to stop besmirching a parent, and to move forward?

Dr. Richard Warshak acknowledges that Dr. Randy Rand began to develop a program known as *Family Bridges* in 1991, in response to entreaties from the National Center for Missing and Exploited Children in order to help reunite children (missing/runaways) with their parents. Such missing children often struggle with feeling frightened of and loathing for the very parent with whom they have been reunited. The idea is to provide quick relief to children who are forced to make a transition back to their parents' home from the home of a kidnapper and/or from living on the street. Dr. Warshak's *Family Bridges*

workshop is “a structured, 4-day, educational and experiential workshop for alienated children and rejected parents.”⁵³ Warshak’s workshop was an easy extension of Rand’s initial concept. To enroll in Dr. Warshak’s *Family Bridges*: the family must enroll as one unit (i.e. the children, the favored parent and the rejected parent). The option is effective where a child’s perception of one parent is unworkable, such that the child is refusing to spend time with the rejected parent and the family needs to assistance in assimilating court orders for reunification therapy.⁵⁴ However, there may not be a fit if there has been harm occasioned by substance abuse or domestic violence. Many clients present at Family Bridges after initial attempts at counseling have failed. Simply said – Dr. Warshak found that if the favored parent is unwilling to seek help, the success of the program may be undermined for such a family. *Family Bridges* involves payment of a flat fee rather than an hourly fee.

When the estranged parent-child relationship results primarily from poor or abusive parenting on the part of the rejected parent, child protection authorities and courts will likely and rightly support a child’s avoidance of contact with that parent. But when the degree of a child’s estrangement and hostility is not warranted by and is disproportionate to the rejected parent’s behavior, courts will often determine that it serves the child’s best interests to have contact with the rejected parent and to repair the damaged relationship.⁵⁵

A clear court order can help the parties, and the professional who attempt to facilitate reunification of the parties and their child(ren). If nothing else, by clarifying duties and goals, the Court can shift the process from snail’s pace preferred by the favored parent, to a more expedient process, which is preferred by the rejected parent. In other words:

By putting in the court order what the judge considers to be measures of cooperation and success the court can expedite the process. Also, by offering things like attendance at specific dates, coming on time, following the guidelines of the Reunification Therapist, sharing information with the GAL, progressively improving parent-child communication, sharing of school and other information with the parent seeking the re-bonding, and a whole host of other specific measures the order can be better articulated. The more conflicted the case, the more specifics are suggested to be put into the court order. This gives the court the objective metrics by which to assess not only compliance but also progress. This articulation of exact judicial expectations should be refined as much as possible.

⁵³ *Id.*

⁵⁴ *Id.*, at 56.

⁵⁵ Richard A. Warshak. *Reclaiming Parent-Child Relationships: Outcomes of Family Bridges With Alienated Children*. JOURNAL OF DIVORCE AND REMARRIAGE. (October, 2018) at 646-646.

They may even include statements of possible interference and how interference will be viewed by the court.⁵⁶

Dr. Clawar adds that a court order can help the professionals involved in the reunification process, to wit:

Professionals can be insulted, intimidated, harassed, and/or (threatened to be) sued by oppositional parents. When the court indicates that the professionals involved will be protected by various forms of immunity, they go a long way to providing a comfort base for the professional executing their designated services. This is especially important where parents have previously been successful in driving respected and ethical professionals out of the case. *Some parents have a history of intimidating professionals* who seem not to agree with their anti-re-bonding goals.⁵⁷

Reunification therapy can end in several ways. In the best of worlds, the parent child relationship is restored between the children and the rejected parent, the favored/alienating parent learns to not cast aspersions and blame, and the parties are ready to move forward in a healthy, coparenting relationship to serve the best interest of their children. Another alternative where alienation is confirmed, dramatic and jarring though it may be, is to remove the children from the alienating parent, to restrict that parent's access, and to place the children with the rejected parent. Judicial intervention – court orders – are necessary to effectuate such a change in custody. Finally, reunification therapy can simply fail in some cases. Failure may occur where an alienated parent refuses to change, or the rejected parent simply gives up on the process and, as in the story of King Solomon threatening to take his sword to split a baby claimed by two mothers, the rejected parent prefers to leave the child intact, albeit marred by the effects of alienation.

⁵⁶ Stanley S. Clawar, *supra*, Parent Child Reunification 219.

⁵⁷ *Id.*

III. Direct and Cross Examination of Mental Health Professionals

Let's begin by looking at factors to consider in choosing a mental health professional in matters involving parental alienation, or worse, reunification cases. Clawar and Rivin endorse the following skill set in such counselors:

- High level of knowledge of custody conflicts.
- Clinical practice with parents and children of divorce.
- Track record of reconciling alienated children and parents (at least twenty to twenty five successful cases).
- Understand that his or her role is to follow and support court orders.
- Can employ new techniques of challenging and confronting distortions in beliefs and security of family social histories.
- Can design a clear treatment plan with goals, techniques, and timelines. Should be able to articulate the procedures and techniques.
- Can and will issue a verbal and written progress report. Should be able to explain the rationale for each intervention.

- Can distinguish between surface behavior/need of the children and long-term needs to reconnect and/or improve their relationship with the target parent.
- Can handle children's manipulation (some of which you may have already been successful in driving out other professionals).
- Knows when to hold separate and joint sessions depending on stage of progress.
- Will seek outside professional advice if needed.
- Can and will enlist other family members to support the court-ordered goals.
- Makes it clear to the children what the goals are and stays on track.
- Has a high professional frustration tolerance.
- Has been appointed/recommended by court systems, conciliation professionals, and attorneys to facilitate parent-child relationship growth.
- Has a reputation as a neutral more than an adversarial forensic expert.
- Understands the difference between 'therapy' and forensic counseling.
- Has knowledge of the research literature on alienated (programmed-and-brainwashed) children.
- Can distinguish between listening to and empowering children.
- Is committed to rebuilding family relationships.
- Cannot be manipulated or threatened out of the case. (A court order can help the counselor be under the court umbrella).⁵⁸

Ms. Truax notes that lawyers are:

...hard-wired to place blame, and want the court to join our blame game. Approaching a resist/refuse case in this fashion will provide not only a disservice to your client, but more importantly, to the family. While we have a duty to advocate for our client, our greater duty is that of counselor. You cannot appropriately counsel if you do not have all the facts and review them with a critical eye.⁵⁹

⁵⁸ Clower and Rivlin, *supra* 363-364.

⁵⁹ *Id.*, 1-2.

So goes direct and cross examination. You must review the facts with a critical eye. If there are allegations of abuse – particularly of physical abuse – many lawyers try to gain advantage by blowing holes in the victim’s statement as to the abuse. Here’s the rub: if a party has endured years of physical abuse, they likely have been subjected to coercive control. The individual suffering physical abuse has been made to feel subordinate and dependent due to their abuser isolating them from family and other individuals who might help and support them, by using their resources for personal gain, by controlling their daily lives, and by keeping them from having the ability to assert independence, resist the abuse, and escape from the abuse.

Through the COVID19 Pandemic, each of us has endured some level of isolation, having to deal with remote schooling for our children, balancing our own work loads against the added needs of our children, potential loss of income, being intimidated by governmental control or lack thereof, and raging emotions. Yet given those experiences, we can empathize with the concerns of a rejected parent, and/or an abused child. Coercive control is different in quality. Coercive control places the victim – be the victim a brainwashed child or a rejected parent or a well intentioned parent who has gone too far – into the position of being entrapped. The entrapment is psychological in part, and structural in part. The abuse may be more prevalent than one might initially think.

Mental health professionals who conduct child custody evaluations must assess information from a variety of sources, including interviews with the litigants and their children, testing, questionnaires, and gleaning source information from third collaterals, such as the parties’ neighbors, medical records, the children’s school records, work records, drug testing results, SOBERLINK results, and other sources, which the professional uses to formulate an opinion. As John Zervopoulos, Ph.D., J.D. notes: “psychologists who offer conclusions or opinions about child

custody or other parenting matters based solely on results from psychological tests or parenting instruments overstep their bounds.”⁶⁰

In a recent appeal from the Austin Court of Appeals, the Austin appellate court⁶¹ held that the trial court properly excluded expert testimony that critiqued the child custody evaluation. Why? The expert witness had not conducted the child custody evaluation. During the pendency of the parties’ divorce, the trial court appointed an evaluator to perform a child-custody evaluation. The father later hired an expert witness, who reviewed the final child custody evaluation, and then generated a report critical of the evaluator’s methodologies, findings and recommendations. The mother filed a motion to exclude father’s expert witness from testifying, on the premise that the ‘expert’ had not been appointed by the court to serve as a child custody evaluator pursuant to Chapter 107 of the Texas Family Code. The trial court heard the mother’s motion to exclude the father’s expert witness, ruling that the expert witness should be excluded from testifying, on the basis that he did not perform a child-custody evaluation and therefore could not qualify as a child-custody evaluator in the suit. The trial court also ruled that any probative value of the father’s expert witness’ testimony would be outweighed by the potential for confusion. Father filed a writ of mandamus. The appellate court denied the writ of mandamus, holding that pursuant to TFC § 104.008(a), only a person who has actually conducted a child-custody evaluation may offer an expert opinion or recommendation relating to conservatorship, possession, or access. Father argued that his expert witness was not being called on to render an opinion on conservatorship, but to identify flawed methodology employed by the child custody evaluator. TFC 104.008(a) does not require that the excluded testimony be the equivalent of an opinion on custody; TFC 104.008(a) authorizes exclusion of expert testimony merely “relating to” conservatorship, possession, or access. The trial court did not err in concluding that father’s expert’s testimony, which impugned the child custody evaluator’s report, was “related to” conservatorship, possession, and access and therefore warranted exclusion pursuant to § 104.008(a). Father failed to show

⁶⁰ John A. Zervopoulos, Ph.D., J.D. (2020) How to Examine Mental Health Experts 84.

⁶¹ *In re Gopalan*, No. 03-21-00209-CV, 2021 WL 2964263 (Tex. App.—Austin 2021, no orig. proceeding) (mem. op.) (07-15-21).

in his mandamus that he would suffer irreparable harm from the exclusion of his expert's testimony. Father failed to show that he could not challenge the admission of the evaluator's opinion through a Daubert hearing. Father also failed to show that his proffered expert witness's opinion could not be used as fodder for cross examination. TFC 104.008(a) is clear. If you are a child custody evaluator, and you find that your report is going to be criticized by a rebuttal witness, the party who wishes to present testimony from such an expert witness has a high burden. Does the party who wishes to a rebuttal witness needs have an independent or joint right to consent to psychological or psychiatric treatment of the children? If that party does not have such a right, they would need a court order for the children to participate in the rebuttal evaluation process. In addition, it would be wise to seek a court order forcing the other parent to participate in the rebuttal evaluation process. Would these steps make for parallel court evaluations? Bottomline: this case creates a means of challenging rebuttal experts in regard to child custody evaluations.

As to cross examination: mental health professionals of mental health professionals, I recommend two excellent books, written by John A. Zervopoulos, Ph.D., J.D., and published by the ABA Family Law Section: Confronting Mental Health Evidence: A Practical Guide to Reliability and Experts in Family Law (2008) and How to Examine Mental Health Experts (2d Ed) (2020).

Dr. Zervopoulos admonishes lawyers not to get laser focused on test results, but rather, to look at the complete evaluation. Psychological testing is simply one component of the evaluation; the evaluation also should include interviews and collateral sources. Dr. Zervopoulos opines that:

Professional psychology distinguishes clinical interviews from forensic interviews. In clinical interviews, mental health professionals develop a therapeutic relationship with their patients, responding with empathy to patient concerns and offering guidance to help patients understand or alleviate emotional hurt or to manage relationships more effectively. In contrast, mental health professionals conducting forensic interviews must curb their use of empathy 'in a manner unusual for clinical practice but essential for fair, ethical, evaluative interaction.' The goal of such 'evaluative interaction' is to discover information that will assist the court in its decisions, per Rule 702 of the Federal Rules of Evidence, rather than to assist the examinee to address personal or litigation issues.

So, on what should forensic child custody evaluation interviews focus? In sum, on the Court's referral questions....

From the psychological perspective . . . no credible literature identifies validity scales in psychological tests as lie detectors.⁶²

The APA Ethics Code provides that psychologists should base their forensic testimony: “on information and techniques sufficient to substantiate their findings,” and further, that professional judgment should be based “upon established scientific and professional knowledge of the discipline”.⁶³ In considering the counselor’s purpose in a given setting, Dr. Zervopoulos identifies three types of counseling:

No-substance counseling is counseling in name only – sessions seem more like social visits with little, if any, critical analysis or push toward client change.

Supportive counseling (present-oriented) primarily assists clients to respond to acute personal or family experiences – perhaps even litigation oriented stress – rather than attend to longer term changes.

Problem-solving counseling (present- and future-oriented) focuses on effecting longer-term changes in the client’s thinking emotions and behaviors.⁶⁴

1. Direct Exam Questions to the child custody evaluator/reunification therapist (as applicable) can include:

⁶² John A. Zervopoulos, Ph.D., J.D. (2020) How to Examine Mental Health Experts (2d Ed) 89 and 97.

⁶³ *Id.* at 124, citing Am. Psychological Ass’n Ethical Principles of Psychologists and Code of Conduct, Standard 2.01(a) (2002, including 2010 and 2016 amendments), <http://www.apa.org/ethics/code>

⁶⁴ John A. Zervopoulos, *supra* 126.

1. Did the expert understand that they had a duty to the court to assist the court, rather than conducting an evaluation on behalf of the petitioner or the respondent or on behalf of one of the lawyers in the case?
2. Did the expert have a prior working relationship with either counsel on other litigation?
How many cases?
3. Did the expert communicate in any way with opposing counsel during the course of the court-ordered evaluation?
4. If there were such communications, what was the content of the communications?
5. If there were such communications, why did the expert not include all counsel of record?
6. Has the expert engaged in a personal relationship with counsel or parties?
7. If there was a prior working relationship, therapeutic relationship, or personal relationship between the expert and one of the parties or one of the lawyers, was that relationship properly disclosed to the court at the outset of the appointment?
8. What disclosures were made at the outset of the evaluation/reunification therapy?
9. As to the evaluation, what were the stated goals/parameters at the first session?
10. As to reunification therapy, what were the stated goals outlined by the therapist for:
11. The rejected parent;
12. The favored parent;
13. Their children;
14. Reunification of the family from a therapeutic and/or forensic perspective.
15. Did the mental health professional address the goals outlined in court orders, if any?
16. Did the mental health professional address and meet the goals outlined for the various parties with whom they were asked to work?

17. Ask the mental health professional to articulate their best recollection of the applicable court orders, and of referring questions embodied in same.
18. Did the mental health professional stick to the boundaries established by court order, or exceed those boundaries?
19. Did the mental health professional use accepted methods for parental alienation and/or reunification therapy?
20. What did the therapist do to explain the evaluation/reunification therapy to the participants?
21. How did the therapist gather signed informed consent forms?
22. For an evaluation, what were the referral questions?
23. For a reunification therapist, what goals were delineated by the referring court or evaluator?
24. Are there accepted methods for parental alienation therapy and/or reunification therapy?
25. Are you familiar with peer reviewed articles on the subject(s) of alienation and/or reunification therapy?
26. What was the most recent article you read on parental alienation? On reunification therapy?
27. How many hours of CEUs do you have in understanding and treating trauma?
28. When was the last time you took a trauma-education based course?
29. Please provide a list of source material you've used in treating victims of trauma? Of alienation?
30. Review the expert's CV – painstakingly. You want the judge to hear it from the witness.
31. How many interviews/sessions did you engage in with each family member?
32. What was the duration of the meetings? Was that enough time to build a sufficient rapport to make a determination on custody/reunification?
33. Did a great deal of time pass between meetings?

34. Did the evaluator/reunification therapist go too far afield – for instance, by reviewing financial data?
35. As to testing results, isn't it true that you cannot tell, simply from reviewing response scales, whether a party has significant emotional problems?
36. Where were the interviews conducted? A neutral location? One party's home?
37. Proximity – was the child interviewed in the presence of the parent?
38. Discuss their knowledge of FRE 702 and how it relates to APA Ethics Code – is this individual competent to provide services, to teach and conduct research in areas of their competence, based on their education, training, supervisory experience, supervised experience, study and/or professional experience?
39. Ask the mental health professional about their familiarity with FRE 703, and the data upon which they base their opinions; did they have sufficient information and implement recognized techniques with which to substantiate their findings?
40. Can the expert opine on trauma and signs of same? On depression, and whether/how they assessed a child for depression if the child claimed that seeing the rejected parent made them depressed?
41. Did the expert rely on: all relevant facts (elicit those facts)? On peer reviewed literature (gather, seek, cross examine as needed)? On accepted principles and theories? On anything else?
42. Considering each party's response style, ask about:
43. Which of the tests administered address the test taker's response style?

44. If there were tests that consider the test taker's response style, are there accurate research findings regarding the validity scales in those tests that help you identify the test taker's response style?
45. What does the test taker's response style to each of the tests administered reflect about the test taker's approach to each test? (Honest? Hiding something?)
46. What did the evaluator do to address the test taker's response style and interpretation of same to the final report/recommendations?
47. Computerized test scores/reports:
48. Was the report computer generated?
49. Aren't different computer scoring services likely to have different interpretations of a given test?
50. From the computer generated report, how did you determine what verbiage to use in your report as to descriptions and diagnoses?
51. Did you incorporate any of the computerized test results into your evaluation/report?
52. Might the test taker's situation (stressed from litigation/separation from children) impact the test results? If so, how?
53. As to computer-based test interpretation, did you acknowledge the computerized test results and incorporate them into your evaluation? How?
54. As to computer-based test interpretation, were there portions of the report – portions that do not support your recommendations – that you failed to acknowledge in your evaluation?
55. Are there any limitations to the computer-based test interpretations you used?
56. How do those limitations impact your conclusions and recommendations?

57. Did the evaluator/therapist rely on a polygraph report in reaching their recommendations?
(The evaluator/therapist likely lacks sufficient training to interpret such test results).
58. As to test results:
59. Did the evaluator administer tests properly?
60. Did the evaluator interpret tests on their own, use support staff, or send responses off to be computer graded?
61. What types of questionnaires, if any, were used?
62. If you were contacted by any of the parties individually during the pendency of the evaluation/therapy, how did you document such contact?
63. Are the evaluator's interpretations of the test results supported by research and professional articles?
64. What else did the professional rely on (body language/eye contact/choice of words/general conduct of favored parent/rejected parent/the children)?
65. In arriving at their opinion, did the mental health professional base their opinion on first-hand knowledge?
66. Interviews with collaterals: isn't true, Doctor, that if you only receive collateral information from family members or more distant relatives, that you should have expected some bias in statements gleaned from such individuals?
67. Isn't there danger in interviewing teachers or physicians who view things from their student's or patient's perspective (and if that person is an alienated child), that if the therapist lacks sufficient understanding of the resist/refuse dynamic that such collaterals may join forces with the favored parent, rather than looking at the situation objectively?

68. Timing: when were the collaterals interviewed – at the outset of the case, or much later?
- Had you completed your interviews with the parties when you spoke with collaterals? How did that timing color the report?
69. Were there collaterals proffered by one of the parties whom you were unable to interview?
70. Did you limit how many collaterals you interviewed?
71. Did you interview an equal number of collaterals for each party?
72. If a collateral demurred, did they say why? Fear that one of the parties would react negatively if they did participate? Concern that one of the parents would retaliate against or punish the child in some way?
73. If a collateral did respond, did they identify a reason why they chose to participate?
74. Did you contact third parties such as teachers and counselors prior to completing your report?
75. Timing: did you consider whether you had a hindsight bias that impacted your reasoning and recommendations?
76. Did you have special training in how to assess the collateral information you obtained?
77. Present a hypothetical for the mental health professional to consider and respond to, based on facts present in the case.
78. Elicit testimony based on data presented to the mental health professional outside of the courtroom by someone other than the expert (say a child custody evaluation being reviewed by the reunification therapist)
79. What is peer reviewed literature (the attorney best come to understand this concept before exploring it; peer reviewed literature includes scholarly articles that represent the latest literature, generally accepted by academic and professional peers – i.e. the concept is valid,

reliable and sustained by peer review. Peer review pertains to the process by which scholarly articles are screened prior to publications. Peer review panels are comprised of other researchers in the field, who must question the contents for:

80. Significance: is this a significant step forward within the context of the other research in the discipline?
81. Methodology: is the means by which the data gathering has occurred consistent with traditional, accepted practice within the discipline?
82. If you ask the mental health professional about a learned treatise, see if they respond based on the following criterion:
83. Reject the article as not pertaining unless you know the date well and agree with everything in the article
84. Characterize the article as one amount many in the field with which professionals in the field should be familiar
85. Push back noting they need to review before they can comment (i.e. asking for a break in testimony to allow time to review and comment)
86. Inquire if the mental health professional agrees with the author, and if they do not, ask why not.
87. Whether the expert provide testimony on the ultimate fact issue: **DEPENDS ON THE JURISDICTION.**
88. The mental health expert should be able to testify about the results of the data gathered in the course of their work with the family; they may be able to present testimony that one parent's ability to parent exceeds that of the other parent and that one parent can better meet the child(ren)'s physical, emotional, and psychological needs.

89. Caution: a mental health professional may not be allowed to provide testimony as to one parent being awarded Sole Managing Conservatorship and the other receiving only possession of and access to the children, as that is an ultimate issue of fact for the judge.
90. Set up the opinion, if it is allowed: what is your professional judgment, based on ____ hours of interviews and work with this family?
91. Did the expert spend an equal number of hours with each parent?
92. Did the expert meet with the parents jointly to start, or individually? If individually, who did the expert meet with, and why? Did that first meeting not favor that parent, and color the expert's opinion as the evaluation process continued?
93. Realize that some judges do not understand that they are in fact gatekeepers, and that based upon proper objection, the "expert's" testimony may be excluded. If you find yourself in a Daubert hearing, one of the attorneys is simply trying to have you, your testimony, and/or your report excluded from consideration at the hearing/trial, arguing that the data used in compiling your report (and the underlying basis of your report) lacks sufficient reliability and validity to be introduced into evidence.
94. Did the evaluator/reunification therapist use generally accepted methodology for child custody evaluations/reunification therapy that reflect the evaluator's/reunification therapist's knowledge and experience?
95. What components were used by the evaluator in creating the report (if one of the triad of testing, interviews/questionnaires and information gleaned from collaterals is missing, the lawyer will move in to tip that three-legged stool that has a missing foot in a hurry).
96. If one of the triad is missing, why was it not employed (testing, interviewing, questioning third party collaterals)?

97. If one of the elements of the triad is missing, does that not compromise the report, the counselor's conclusions and recommendations?
98. Is the data upon which the evaluator/reunification therapist reliable? If the information relied upon is not trustworthy, does that lack of transparency impact the evaluator/reunification therapist's observations and recommendations?
99. How is a clinical interview different from a forensic interview?
100. How does your experience qualify you to reach your conclusion?
101. What are the witness' experiences that make them qualified to opine as an expert?
102. Were appropriate procedural safeguards employed?
103. What techniques were used to interview the parents?
104. How was information gleaned from the child(ren).
105. What methodology was employed in observing interaction between the two parents and between each parent and the child(ren)?
106. How much did you rely on pertinent documents?
107. What were those documents?
108. What manner did you use to obtain collateral information, how did you obtain the information, and how did you assess the reliability of the information gleaned?
109. What methods did you use to corroborate the information you relied on?
110. What criteria did you use in deciding which assessment instruments to use with each party? With the child(ren)?
111. What manner did you use to assess whether scoring and interpretation data was accurate?

112. What did you do to assure the integrity of the evaluation/reunification therapy process?
113. What have you done to comply with ethical standards, applicable laws and regulations that impact the creation, maintenance and production of appropriate records upon which you relied in creating your report/doing reunification therapy?
114. What specific training did you receive for each of your experiences, and how does it impact your ability to testify as an expert in this case?
115. What articles has the witness published on point?
116. What workshops has the witness conducted regarding this area (evaluations/reunification therapy)?
117. What supervision, if any, did you receive prior to holding yourself out as qualified in this area?
118. What methods did you use to gather data?
119. Are those methods generally accepted in the mental health community?
120. Identify other mental health professionals who use the methods that you employed in this case.
121. Explain to the court how you employed the methods you've alluded to.
122. What information did you glean through these methods?
123. Is it possible for these methods to produce results that are unreliable? Wrong?
124. Are there alternative explanations that could be made based on your data?
125. Do your recommendations have sufficient basis in mental health research and publications to be reliable?

126. Once each party reviewed the report and your conclusions, did either party reach out to you to give you additional data or to try to challenge any of the information or data upon which you relied? If so, what was the complaint/observation, and has the additional data influenced your perspective?
127. Were the interviews recorded? Did the evaluator/therapist use a Livescribe pen⁶⁵ or recording device?
128. If you relied on emails or texts, what did you do to authenticate such documents?
129. Are you familiar with the Association of Family and Conciliation Courts guidelines? What do the AFCC guidelines say about your obligations to maintain records? (AFCC 3.2(a) “evaluators shall presume that their records are created, maintained and preserved in anticipation of their review by others who are legally entitled to possess them and/or to review them”.⁶⁶
130. What do the AFCC guidelines say about keeping up with current literature upon which you rely? (AFCC 4.6(b) “evaluators are strongly encouraged to utilize and make reference to pertinent peer-reviewed published research in the preparation of their reports”.⁶⁷
131. In the era of COVID: is there not an inherent difference between sessions completed on line, where you cannot be attuned to body language, and in person sessions?
132. Is any “home visit” accurate when it has been conducted on line?

⁶⁵

<https://www.bing.com/videos/search?q=Livescribe+pen&docid=608047638472118006&mid=88759C5B0A6337E4118588759C5B0A6337E41185&view=detail&FORM=VIRE>

⁶⁶ AFCC Model Standards of Practice for Child Custody Evaluations.

⁶⁷ *Id.*

133. Even if you asked a parent and/or child to use their iPad or iPhone to scan the room to “prove” that no one else is present, is it not possible that someone else entered the room and was coaching the individual during your session?
134. If there was an allegation of child abuse, are your (verbatim) notes accurate? Is it possible that the child remembers bits of on-going assaults in flashes?⁶⁸
135. For parental alienation/reunification cases: is there an easy resolution? Does one party simply wish to say goodbye?
136. Is there bias inherent in the process: hindsight, confirmatory, distortion, primacy and recency effects and selective attention to detail? Are you biased? Aren’t we all biased?
137. Looking at your recommendations: are they going to work in the real world?
138. Do your recommendations – regarding access to and possession of the children – make sense when considered from the perspective of the public policy of this State?

2. Essence of Cross Exam

Beware of the leading question – you are to respond, “yes”, “no”, “I don’t know,” or “I don’t understand the question, if you can do so. Leave it to the attorney who has subpoenaed you to the hearing or trial to come back on redirect and allow you to clarify anything that needs clarification.

- a. What level of training, experience, knowledge and reputation does the individual present to the court with?
- b. Was their evaluation process appropriate? Did the professional use proven, accepted, valid and reliable processes, and relied on proper peer-reviewed studies and research to make conclusions that make sense, given the information they were

⁶⁸ Michael E. Lamb, et al (2000) *Law and Human Behavior*, Vol. 24, No. 6.

provided or gleaned from interviews, testing results (as applicable) and work with the parties and collaterals?

- c. Did the professional remain objective? Is there indicia of bias in the professional's report, demeanor, or interaction with the parties or their child(ren)? Has the witness presented as a professional, or has the professional morphed into an advocate?
- d. Is the professional neutral, free of bias?
- e. Is the professional competent?
- f. Has the professional maintained appropriate boundaries as they perform their role in the case? A reunification therapist typically functions as a bit of a forensic evaluator AND as a treating therapist.
- g. Do you attack the expert's field? Pillory them on their lack of qualifications? Attack the facts upon which the expert relied? Vary the facts through a hypothetical to cast doubt on their veracity? Impeach them through peer-reviewed literature that they are unfamiliar with?
- h. Have you taken an opposing view in cases with similar facts?
- i. Can we agree that _____.
- j. You did not do a thorough job following up with collaterals, did you?
- k. Were you cognizant of (as to the evaluator; and as to the reunification therapist to the extent they relied on the child custody evaluation): (pick pertinent portions regarding any of the following);
 - i. American Psychological Association Ethics Code;
 - ii. American Academy of Adolescent and Child Psychiatry
 - iii. Association of Family and Conciliation Courts Model Standards

iv. APA's Child Custody Guidelines.

- l. If all else fails: this is all guesswork, isn't it Doctor?
- m. You were biased going into this, and you simply confirmed what you wanted to look for, didn't you?
- n. You lack competence in your field, don't you – no one else would have interpreted test results this way, would they?
- o. More nicely: these test results are open to other interpretations, correct?
- p. You were hostile to my client throughout this process, weren't you?
- q. You billed for "x" home visits, knowing that the parents could and would pay you, when the visits could simply have happened at your office, which would have saved "y" (x 2) hours billed – and all those visits happened at Dad's house correct? You visited my client how many times at her home? Once?

3. Hearsay

An out of court statement – oral or written – offered to prove the truth of the matter asserted within the statement.

Federal Rule of Evidence 803 establishes 23 exceptions to the hearsay rule; additional exceptions are addressed in FRE 804 and 807.

FRE 803 establishes exceptions to the hearsay rule for:

1. Present sense impression;
2. Excited utterance;
3. Then existing mental emotional, or physical condition;
4. Statement made for purpose of medical diagnosis or treatment;
5. Recorded recollection;

6. Records of regularly conducted activity;
7. Absence of a record of a regularly conducted activity;
8. Public records;
9. Public records of vital statistics;
10. Absence of a public record;
11. Records of religious organizations concerning personal or family history;
12. Certificates of marriage, baptism and similar ceremonies;
13. Family records;
14. Statements in documents that affect interest in property;
15. Records of documents that affect interest in property;
16. Statements in ancient documents;
17. Market reports and similar commercial publications;
18. Statements in learned treatises, periodicals or pamphlets;
19. Reputation concerning personal or family history;
20. Reputation concerning boundaries or general history;
21. Reputation concerning character;
22. Judgment of a previous conviction;
23. Judgments involving personal, family or general history of a boundary.

FRE 804 exceptions -where the declarant is unavailable:

1. Exempt from testifying due to privilege
2. Refuses to testify despite court order
3. Testifies they do not remember

4. Cannot be present due to death, then existing infirmity (physical or mental).

Criteria re FRE 804: Declarant unavailable and there is former testimony, a statement made under the belief of imminent death, a statement against interest or a statement of personal or family history). The witness would be absent from trial and the person trying to present the prior statement has not been able to get them to the courthouse.

FRE 807: statement not excluded if:

1. There is some circumstantial guarantee of trustworthiness
2. The statement is offered as evidence of a material fact
3. The statement is more probative and on point regarding what it is offered for than any other evidence
4. Admitting the evidence will serve the interest of justice and the purposes of the rules.

FRE 703:

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted.

Typical exceptions to the hearsay rule in family law matters, especially in regard to child custody evaluations, parental alienation allegations and reunification therapy matters:

1. Present sense impression TRE 803(1).
2. Excited utterance TRE 803(2)
3. Not offered for the truth of the matter asserted TRE 801 (c)
4. Outcry of abuse TFC 104.006
5. Child victim of family violence TFC 84.006

4. Summary

How to choose an expert, be it the person who engaged in reunification therapy, or a mental health professional engaged for the sole purpose of reviewing the file? Look to their educational background and training; their experience (not their first rodeo, as we say in Texas), have reviewed the file and are intimately familiar with the facts; speak persuasively; impress the judge/jury as honest and professional, and present in a likeable, understandable fashion. The mental health professional educates the court – opening the door to the family and its (troubled) dynamics. An expert can also be a consultant – who would never be called to testify – but who helps coach both the lawyer and the lawyer’s client, helps expose the lawyer to peer reviewed literature, assists in preparation for hearings, depositions and trial, and more. As J.P. Wittman opines:

Our field is famous for supporting conclusions during testimony simply on the basis of ‘accumulated clinical experience’, a phrase which may mean nothing more than ‘accumulated personal bias.’”⁶⁹ In the event that an expert does not utilize accumulated knowledge, the opinion expressed is not an expert opinion – instead it is a personal opinion, “albeit one expressed by an expert”.⁷⁰

As in any case, familiarity with the players, the court, the judge, the type of case, the opposing counsel, other experts involved in the case, and having knowledge of the current peer reviewed literature is crucial. In 2011, a study concluded that lawyers’ typical complaints about child custody evaluations were that they “focused on [the] evaluator’s indecisiveness, illogical conclusions, ignorance regarding the Best Interests of the Child Standard, and making or not

⁶⁹ J.P. Whittman (1985) Child Advocacy and the Scientific Model in Family Court: A Theory for Pre-Trial Self-Assessment, THE JOURNAL OF PSYCHIATRY AND LAW, Vol. 13 (1) 77-78.

⁷⁰ D.A. Martindale (2001) *Cross-examining Mental Health Experts in Child Custody Litigation*, JOURNAL OF PSYCHIATRY & LAW, 483-511.

making recommendations.”⁷¹ In a 2021 article⁷² in *The Atlantic*, Joshua Coleman opines on the changing family dynamic, parental estrangement, and the impact of such changes, noting that “[h]owever they arrive at estrangement, parents and adult children seem to be looking at the past and present through very different eyes.” In litigation, as in life, allegations can be asserted, accusations can be tossed about, that take a permanent toll on families. Coleman quotes Steven Mintz, who opined to Coleman:

Families in the past fought over tangible resources – land, inheritance, family property. They still do, but all this is aggravated and intensified by a mindset that does seem to be distinctive to our time. Our conflicts are often psychological rather than material – and therefore even harder to resolve.

Coleman notes that in his clinical work:

I have seen how divorce can create a radical realignment of long-held bonds of loyalty, gratitude, and obligation in a family. It can tempt one parent to poison the child against the other. It can cause children to reexamine their lives prior to divorce and shift their perspective so they now support one parent and oppose the other. It can bring in new people – stepparents or stepsiblings – to compete with the child for emotional or material resources. Divorce – as well as the separation of parents who never married—can alter the gravitational trajectories of a family so that, over time, members spin further and further out of one another’s reach. And when they do, they might not feel compelled to return.⁷³

Attorneys serve as advocates. We are obliged to zealously represent our clients within the bounds of the law. The law also obliges us to be cognizant of what is in the best interest of the children who are made the subject of litigation. Psychologists serve in therapeutic capacities and in forensic capacities; mental health professionals have standards to uphold in their practice, and in the course of engaging in forensic work, including child custody evaluations. More nebulous for each professional is the area of reunification therapy, where families have grown so estranged,

⁷¹ Bow, Gottlieb and Gould-Saltman (April 2011) *Attorneys’ Beliefs and Opinions About Child Custody Evaluations*, FAMILY COURT REVIEW, Vol 49, No 2, 301-312.

⁷² Joshua Coleman (Jan. 2021) A Shift in American Family Values Is Fueling Estrangement. THE ATLANTIC.

⁷³ *Id.*

or children so alienated, professional help is required to bring them back together as a functional unit, even post-divorce or post-separation for those who never married. This is hard work. Hopefully, this presentation will allow you to go forth better armed for these difficult tasks.

IV. Articles of Interest

1. Elisa Reiter and Daniel Pollack (January 2021) *Effective Strategies of Direct and Cross Examinations of Mental Health Professionals in Child Abuse Cases* TEXAS LAWYER
2. Elisa Reiter and Daniel Pollack (June 2021) *Ethical Child Custody Evaluations: The Good, The Bad and The Ugly* TEXAS LAWYER
3. Elisa Reiter and Daniel Pollack (August 2021) *Protecting Clients Who are Divorcing Someone with Borderline or Narcissistic Personality Disorder* TEXAS LAWYER
4. Daniel Pollack and Elisa Reiter (June, 2021) *Let's Confront Child Welfare Law Buzzwords*. New York Law Journal.

Effective Strategies of Doing Direct and Cross-Examinations of Mental Health Professionals in Child Abuse Cases

Elisa Reiter and Daniel Pollack | September 13, 2021



What You Need to Know

- During FFY 2019, CPS agencies received an estimated 4.4 million referrals involving the alleged maltreatment of approximately 7.9 million children.
- How many of these cases resulted in civil lawsuits is unknown; also unknown is the much smaller number that actually go to trial.

- When they do go to trial, mental health professionals will certainly be among the witnesses; are there particularly effective strategies that attorneys should use on direct and cross-examination?

The federal government, in its report. *Child Maltreatment 2019: Summary of Key Findings*, writes:

During FFY 2019, CPS agencies received an estimated 4.4 million referrals involving the alleged maltreatment of approximately 7.9 million children. The national referral rate is 59.5 referrals per 1,000 children in the population. Of these referrals, approximately 2.4 million reports—concerning approximately 3.5 million children—were screened in as “appropriate” for CPS response and received either an investigation or alternative response. The national rate for children receiving either an investigation or alternative response was 47.2 children per 1,000 in the population.

How many of these cases resulted in civil lawsuits is unknown. Also unknown is the much smaller number that actually go to trial. When they do go to trial, mental health professionals will certainly be among the witnesses. Are there particularly effective strategies that attorneys should use on direct and cross-examination?

The very use of the term “child abuse” casts certain inferences. Those inferences arguably create bias in the mind of a mental health professional handling the case. For example, if parents accuse each other of alienating the child’s affections, will a child’s outcry of an intention to engage in self-mutilating behavior or suicidal ideation be taken seriously, or will the mental health professional simply dismiss the outcry as being a seed planted by someone intent on engaging in parental alienation? If

the latter, an attorney may have a first step in cross examining the mental health professional. Here are some other steps:

1. Review the pleadings and supporting affidavit. Has the mental health professional sworn out an affidavit alleging child abuse? Likely, the affidavit includes hearsay. Is the affidavit subject to objection? Is there hearsay within hearsay within a supporting affidavit or other records? Is there any cushion because the mental health professional is an outcry witness?
2. Daniel W. Shuman and John Zervopoulos write in their article, “Empathy or objectivity: The forensic examiner’s dilemma?”:

Examiners are ethically bound to manage personal biases that may infect their expert opinions. Empathy-related issues that lead to bias in forensic assessment of adjudicative competence arise in evaluation interactions with defendants (therapeutic empathy) and from examiners’ personal views of issues that these assessments address (empathy-bias).

As an attorney, what do you attack? Hindsight and confirmatory bias. Did the mental health professional simply see what they wanted to see or manipulate the facts in such a way to comport with their assessment of child abuse? Does the mental health professional have a proclivity for institutionalized bias because they work for the state’s child protection system? Can you detect blind spots the mental health professional may have regarding their assessment? Do our unconscious biases toward groups and individuals unwittingly stigmatize our judgment? Such blind spot biases may mislead those involved in child abuse cases into errors of judgment. See Dr. John Zervopoulos’ Bias Codex.

3. Regarding records, consider a Subpoena Duces Tecum, Deposition by Written Questions and/or a videotaped/transcribed Deposition. Be sure to review any testing records and billing records, as applicable. Consider the following:

- Do the records reflect a diagnosis?
- What was the treatment plan?
- Was the child interviewed in either parent's presence?
- Were there prior reports of abuse or domestic violence?
- Were there any protective orders granted?
- If the child was injured, was the child examined by anyone regarding any physical signs of abuse?
- Is this litigation retaliation by one parent against the other?
- Were there reports of the alleged abuse made to Child Protective Services (CPS)?
- Was the child taken to a hospital for treatment?
- Are there criminal records?
- Was there a police report?
- If the child was not taken to the hospital, was the abuse reported to any other authority, or was there treatment sought anywhere?
- Can the physical injuries be explained in any other way?
- Was there an arrest?
- Was there a protective order application filed or issued?
- Did the District Attorney refuse to seek an indictment?
- Regard billing, did the mental health professional approach the child as a patient, or as if conducting a forensic investigation?
 - If the former, does the child know the difference between right and wrong?
 - Is there any evidence of the child having a history of lying?
 - Do either of the parents and/or the alleged perpetrator have a history of lying?
 - Is there a prior criminal history for anyone involved?
 - Did the mental health professional reach out to in order to verify the allegations of child abuse?
 - What records were interviewed, and when? CPS records, medical records, criminal records and school records should be reviewed.
 - Did the mental health professional have the applicable license to allow him or her to have the parties and their child engage in psychological testing?
 - Were there computerized test results? If so, where were the tests scored, and are any diagnosis noted in the testing results trustworthy?
 - Did the mental health professional review prior child custody evaluations of the parties? If so, when? Did that review color the professional's perspective on the case?

4. Which credentials does the mental health professional have? Make sure the mental health professional is familiar with the following:
 - Applicable state laws regarding child abuse and how evidence of abuse may impact child custody.
 - Evaluations of children who have suffered trauma.
 - If there was intent to self-harm, what did the mental health professional do to assess the child's status, versus simply ignoring the outcry and attributing it to an act indicative of parental alienation?
 - If there is an attorney ad litem involved, has the attorney sought training in trauma based education?
5. Regarding Daubert, Joiner and Frye, is the witness credible? Does the witness base his or her testimony on reliable, verifiable data? Should the judge act as gatekeeper to allow the testimony, or slam the door and exclude the mental health professional's testimony? If a child is to act as a witness in a child abuse case, what special precautions should be taken?

There are a variety of way of enhancing and attacking the testimony of a mental health professional, including: impeachment with prior inconsistent statements, bias, interest in the outcome, signs of coercion, coached testimony, prior misconduct for which there was no prosecution, defects in capacity, lack of interview of records or collateral witnesses, and contradictions in testimony. When it comes to child abuse cases, always err on the side of best interest and protecting the child.

Elisa Reiter is Board Certified in Family Law and in Child Welfare Law by the Texas Board of Legal Specialization, and is a Senior Attorney with Underwood Perkins, P.C. in Dallas, Texas. Contact: ereiter@uplawtx.com; 972-661-5114.

Daniel Pollack is an attorney and professor at Yeshiva University's School of Social Work in New York City. He is also a Commissioner of "Game Over: The Commission to Protect Young Athletes" (the "Larry Nassar Commission"). Contact: dpollack@yu.edu; 646-592-6836.

Ethical Child Custody Evaluations: The Good, The Bad and The Ugly

In a divorce, there may be a child custody dispute, but whatever objections may arise, hopefully, there should be no question concerning the evaluator's ethics or objectivity.

By Elisa Reiter and Daniel Pollack June 13, 2021 at 03:20 PM



Clint Eastwood as "Blondie," or "The Man With No Name," in the classic film "The Good, The Bad and The Ugly."

Often, the greatest battle in a divorce is not about money, but about who will have custody of the children. If there is a custody dispute, a child custody evaluation may be an important aspect of the case. It is intrinsic to child custody disputes that one or both parties may be dissatisfied with the evaluator's recommendation. Whatever

those objections, hopefully, there should be no question concerning the evaluator's ethics or objectivity.

[Dr. Jonathan Gould](#) suggests that “the primary focus for evaluators is to understand the child development research and then apply relevant research to each case.” Task one includes an examination of the parenting history of each child. Is the child the beneficiary of joint caretaking by both parents? Has the child exhibited any qualms or difficulties related to being cared for by each parent while the family was intact? What can the evaluator predict about potential risk to the child if there was or was not shared parenting responsibilities or if the parents belittle each other?

Evaluators must parse:

- How families approach their physical space - how they navigate from one place to another, including work and school schedules;
- How each parent deals with their own emotional needs and the emotional needs of their children at their home;
- How each parent sets and/or respects boundaries;
- How flexible or rigid each parent is in their thinking, including about the amount of time and quality of time the child spends with the other parent;
- How each parent fills their days when away from the other parent and/or the children;
- How each parent processes their feelings about the divorce - the Kubler Ross grief cycle attendant to the death of the marital relationship;
- How each parent feels about sharing activities regarding the children with the other parent.

[Texas Family Code Chapter 107](#) establishes rules to govern special appointments, including child custody evaluations. [Evaluators and judges](#) must reflect on the fact that “seldom can a court find one party adequately represents a child's interest or that party's interests are not adverse.” Attorneys intent on zealous advocacy must prepare their clients as best they can, realizing that as advocates, we can guide, but not control human behavior.

[Texas Family Code Section 107.104](#) establishes minimum qualifications for child custody evaluators. Minimum criteria include: holding a degree and being licensed in Texas as a “social worker, professional counselor, marriage and family therapist, or psychologist, or, have a license to practice medicine in this state and a board certification in psychiatry.” Additional statutory prerequisites to serve as a child custody evaluator in Texas include, in addition to holding one of the degrees noted, to:

have two years of full-time experience equivalent part-time experience under professional supervision during which the individual performed functions involving the evaluation of physical, intellectual, social and psychological functioning and needs and developed an understanding of the social and physical environment, both present and prospective, to meet those needs.

Without abundant and meaningful training and experience, child custody evaluators will not be able to ensure that their evaluations will conform to at least minimal ethical standards. The evaluator’s experience is a crucial factor. In addition to the foregoing, once they meet the foregoing threshold criterion, they must have performed at least 10 court ordered child custody evaluations under the supervision of a professional who is qualified to conduct evaluations. Those who conduct evaluations must also be familiar with the applicable guidelines appropriate to their [licensure](#).

Divorce is taxing physically, financially and emotionally. How can an overwrought parent prepare? Gathering documentation for the evaluator is only a starting point. Is the parent cooperative, conflicted or disengaged? Posed differently, there are parents who demonstrate [parental responsiveness versus parental demandingness](#). Does [the parent](#) indulge the child’s every whim? Is the parent authoritarian? Is the parent authoritative? Is the parent neglectful? Do socioeconomic factors impact the family? Does either parent’s family of origin include a history of mental and/or physical health risks?

Particularly important is that the evaluator must be able to act in an ethical manner. The Association of Family and Conciliation Courts publication, [Model Standards of Practice for Child Custody Evaluation](#) (p. 7) specifically notes: “Evaluators fulfill a role that is consistent with the needs of and directives from the court. When the

specified role(s) cannot ethically be accepted and/or when the directives cannot ethically be followed, evaluators shall decline participation and shall articulate in writing the basis for the decision to decline.” In short, evaluators must be truly neutral and non-judgmental. In February 2021, in an [Analysis of Proposed APA Guidelines for Child Custody Evaluation Introduction](#), the following criticism is raised:

The routine failure of child custody evaluations to apply the ‘established scientific and professional knowledge of the discipline’ results in ‘recommendations, reports, and diagnostic or evaluative statements, including forensic testimony’ not being based on information ‘sufficient to substantiate their findings,’ and these failures cause substantial harm to the child and surrounding family.

In addition, the evaluator’s internalized implicit biases may impact the evaluation. [Experts](#) may be influenced by stereotypes they hold, and their data analysis may be influenced by those long held prejudices. In an era where we are attempting to hold attorneys to higher standards in avoiding implicit bias, we should not stand alone. To strive for an ethical child custody evaluation, evaluators must not only have training as described herein, they must be sensitive to their own biases. If an evaluator believes one parent to be a credible source, and has an inherent willing suspension of belief of the other parent, the evaluator may have lost sight of the importance of neutrality. A good cross-examination should elicit whether or not the evaluator contemplated alternative scenarios to the recommendations set out in the evaluator’s report.

As [Harper Lee](#) wrote, “[p]eople generally see what they look for, and hear what they listen for.” Let’s continuously push ourselves and child custody evaluators for maximum ethical conduct.

[Elisa Reiter](#) is an attorney, Board Certified in Family Law and in Child Welfare Law by the Texas Board of Legal Specialization, at Underwood Perkins, P.C. Contact: ereiter@uplawtx.com.

[Daniel Pollack](#) is an attorney and professor at Yeshiva University’s School of Social Work in New York City. Contact: dpollack@yu.edu.

Protecting Clients Who Are Divorcing Someone with Borderline or Narcissistic Personality Disorder

It's difficult to find balance in the roller-coaster ride imposed by someone suffering from a personality disorder.

By Elisa Reiter and Daniel Pollack | August 4, 2021



What You Need to Know

- Approximately 15 percent of adults in the United States meet the criteria for a personality disorder, according to the DSM-5.

- Divorce cases today are complicated by more individuals with borderline and narcissistic personalities.
- Cases involving a party with a personality disorder can easily morph into lifetime cases.

Bill Eddy, LCSW, JD (attorney, mediator, clinical social worker, and kindergarten teacher), joined with Randi Kreger (co-author of “Stop Walking on Eggshells”) to produce a fully revised and updated second edition of “Splitting,” published in July. Who may be impacted? The authors note that, reading the 5th edition of the “Diagnostic and Statistical Manual of the American Psychiatric Association” (DSM-5), published in 2013, one concludes: “The DSM-5 states that approximately 15 percent of adults in the United States meet the criteria for a personality disorder (APA, 2012, 646), which is equal to or greater than the percentage of adults with a substance abuse disorder.”

The first edition of “Splitting” was published in 2011. The most significant changes in the 2nd edition are details about dealing with anti-social personalities as well as the addition of a new chapter, “Presenting Your Case.” Eddy and Kreger note that in addition to seeing divorce cases complicated by individuals with borderline and narcissistic personalities, there appear to be more cases involving individuals with anti-social personality disorder. Further, the means of checking on families where domestic violence is an issue were complicated by COVID. Moreover, courts might excuse

aberrant behavior as situational or inappropriately allow blame to be shifted to the (more) reasonable parent.

In Chapter 7, Kreger highlights certain issues that are often raised in family court in regard to protective order applications:

1. Substance abuse;
2. False allegations of substance abuse;
3. Child abuse;
4. False allegations of child abuse;
5. Domestic violence;
 - a. Coercive controlling violence
 - b. Situational couple violence
 - c. Separation-instigated violence
 - d. Violent resistance
6. False allegations of domestic violence;
7. Legal impact of findings of abuse;
8. Parental alienation;
9. False allegations of alienation;
10. Relocation issues;
11. Financial manipulations;
12. False allegations of financial manipulations.

How does one spot a liar? Look for clusters and patterns. Keeping a written record of events can be crucial for the litigant, and for his or her advocate. Judges may not be familiar with borderline personality disorder or other personality disorders. Is there a day in family law practice when we do not hear someone accused of being a narcissist, or of engaging in parental alienation? Eddy and Kreger note the importance of not simply using labels, but of digging deeper (at 188):

Don't use the term "personality disorder" in court unless someone else brings it up. Explain patterns of behavior to evaluators and to the judge by providing detailed, accurate examples. Then explain why you are concerned that these patterns of behavior are not going to change unless there is court intervention (sanctions, restraining orders, changes in the parenting plan, and so forth).

For instance, the authors give the example of someone who has a borderline personality disorder, and is low-functioning. Such an individual may be prone to self-harm and to expressing suicidal ideations. They may be unable to control their emotions, frequently flying into impulsive rages, often criticizing and blaming others. A person with a low-functioning borderline personality disorder often remains in denial, projecting blame onto others rather than taking responsibility for their own acts or omissions. While this person might engage in therapy for a time, he often leaves therapy, or refuses to take the process seriously. He might engage in self-medication (through alcohol abuse, substance abuse, or financial issues). There is often a huge impact on family members who are left to try to find a counselor willing to work with an often-noncompliant patient, a patient prone to self-destructive or inappropriate behavior. Family members try repeatedly to resolve situations, exhorting their borderline relative to get professional help.

Expert witnesses are often needed to explain why:

- A person with a personality disorder can constitute a danger to the family unit that may not be obvious;
- Individuals suffering from personality disorders may not be credible witnesses as to their own acts or omissions;
- Individuals suffering from personality disorders may not be credible witnesses as to their spouse's acts or omissions;
- Individuals suffering from personality disorders often defy court orders.

Consequently, family law practitioners learn not to trust the opposing attorney, and to sometimes have a willing suspension of disbelief as to our own client. A person with borderline personality wants his advocate to be the savior, and to extract revenge on the opposing party for abandonment. A person with borderline personality disorder will love—until he hates—the very person or thing he once loved. And if things don't progress as he thinks it should, that hate will be manifested as a projection from his despised spouse to the attorney he feels should have been his hero. Blame is abundant.

What happens when we go to court? Emotions are exacerbated. If you are dealing with a blamer, his hope is to extract a pound of flesh, and to “seek validation of their cognitive distortions” (at 193). Such people search for attorneys described as “mad dogs,” “ferocious,” or “bullies.” They want someone who buys into their story rather than questioning them, their perceptions, or their motivations.

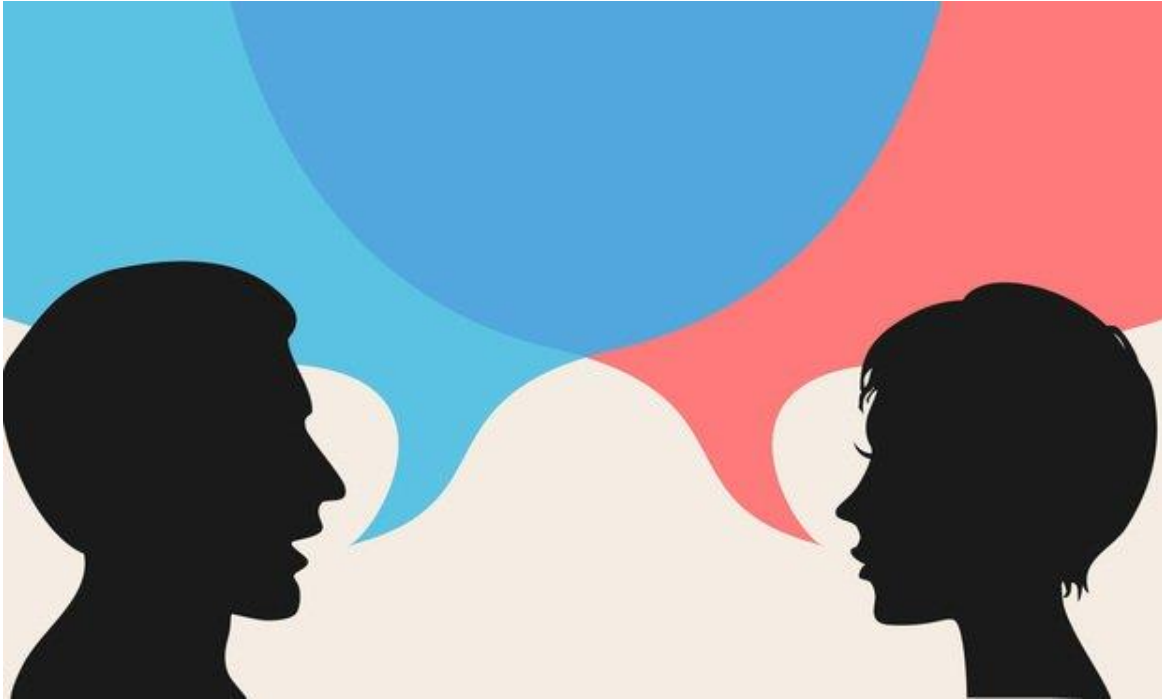
In the all-new Chapter 14 to Splitting, Eddy and Kreger make the following recommendations (at 225-229):

1. Write up three or four patterns of behavior that are troublesome. In lieu of a chronological (often lengthy) summary, they suggest presenting three or four instances or patterns of the most concerning aspects of behavior demonstrated by the party with a personality disorder. Highlights might include:
 - a. Violent behavior toward the children made the subject of the litigation;
 - b. Undermining the other parent's relationship with the children;
 - c. Lying about the other parent; for instance, by initiating a call with Child Protective Services;
 - d. Create a summary of desired orders;
 - e. Present testimony in support of the requested relief.

Eddy and Kreger are simple, thorough and easy to read. In addition to addressing the divorce process, they also address ways of enhancing a party's relationship with another parent suffering from a personality disorder. They understand that cases involving a party with a personality disorder can easily morph into lifetime cases. They urge balance, in court and outside of court. It's difficult to find balance in the roller-coaster ride imposed by someone suffering from a personality disorder, but reading the "Splitting" will make for an easier ride.

*Elisa Reiter is board-certified in family law and child welfare law by the Texas Board of Legal Specialization. Reiter is a senior attorney with Underwood Perkins.
Contact: ereiter@uplawtx.com.*

*Daniel Pollack is a professor and attorney at Yeshiva University's School of Social Work. He has served as an expert witness for attorneys in more than 30 states.
Contact: dpollack@yu.edu.*



Let's Confront Child Welfare Law Buzzwords

In the world of child welfare law, three of the best-known culprits are “best interest of the child,” “neglect,” and “Post-Traumatic Stress Syndrome (PTSD).”

By Daniel Pollack and Elisa Reiter

June 18, 2021 at 10:00 AM

Buzzwords are words or phrases that seemingly are very meaningful but in truth are open to great interpretation. While politicians are probably best known for their overuse of buzzwords, legislators, courts, attorneys and policymakers must also plead guilty. In the world of child welfare law, three of the best-known culprits are

“best interest of the child,” “neglect,” and “Post-Traumatic Stress Syndrome (PTSD).”

Depending on the situation, “best interest of the child” usually refers to taking into account a number of factors. To name just a few:

1. The child’s current housing arrangement;
2. The presence or availability of drugs and alcohol;
3. The mental stability of the child’s caretakers;
4. Whether there is a history of domestic or child abuse;
5. The financial stability of the caretakers;
6. The caretakers’ plans for the child now and in the future;
7. The unique health, mental health, and education needs of the child.

The [NYCourts.gov website](https://nycourts.gov) acknowledges the inexactness of the “best interest” phrase: “When there is a court case that affects a child, like custody, parental rights, or adoption, the court will consider the "best interest" of the child when making its decision. There is no standard definition of "best interest" of the child. In general, it refers to the factors that the Judge considers when deciding what will best serve the child and who is best suited to take care of the child. In New York, the "child's health and safety shall be the paramount concerns" when making a decision.”

Regarding “neglect,” New York Consolidated Laws, Social Services Law - SOS § 371, [states](#) that “Neglected child” means a child less than eighteen years of age

(i) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care

(A) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; or

(B) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court; provided, however, that where the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he loses self-control of his actions shall not establish that the child is a neglected child in the absence of evidence establishing that the child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as set forth in paragraph (i) of this subdivision; or

(ii) who has been abandoned by his parents or other person legally responsible for his care.”

Post-Traumatic Stress Disorder (“PTSD”) may impact child welfare cases. However, the term “PTSD” is constantly evolving. What constitutes a “stressful event” of sufficient magnitude to merit the diagnosis? In 1980, the [DSM-III](#)

mandated a “recognizable stressor that would evoke significant symptoms of distress in almost anyone”. By 1987, the [DSM-III-R](#), the term was further refined, to require that the stressful event had to be “. . .outside the range of normal experience and that would be markedly distressing to almost anyone . . .” In 2013, the [DSM-V](#) included a new category of Trauma and Stressor Related Disorders. Eight criteria for PTSD were established for individuals over six years of age in the DSM-V, including:

1. A stressor, such that the person was exposed to: death, threatened death, actual or threatened serious injury, or actual or threatened sexual violence;
2. Intrusion Symptoms, such that the traumatic event is experienced over and over again;
3. Avoidance of trauma inducing experiences;
4. Negative alterations of mood and/or memory;
5. Alterations in arousal and/or reactivity;
6. Duration of symptoms of more than one month;
7. Symptom that impact upon the ability to function (socially, professionally);
8. Exclusion of other factors, such as symptomology being attributable to alcohol, drugs or illness.

Child custody evaluations are predicated on the presumption that mental health professionals who are appointed by the court and/or retained to accurately assess parents and their children can assess situation that do not yet exist:

1. The parties may not yet have divorced;

2. A change in primary custody is contemplated but has not yet occurred;
3. A change in one or both parties' rights of access to or possession of the child may not yet have changed;
4. A parent's rights may not yet have been terminated.

Child welfare is a complex alphabet-soup of buzzwords. If even the above three key terms can't be more precisely defined, how can the laws which use them – and many others – be fairly and consistently enforced? When charges of biased implementation are levelled, how can they be defended against?

Daniel Pollack is a professor and attorney at Yeshiva University's School of Social Work in New York City. Contact: dpollack@yu.edu.

Elisa Reiter is an attorney, Board Certified in Family Law and in Child Welfare Law by the Texas Board of Legal Specialization. She is licensed to practice in Texas, New York, D.C. and Massachusetts. Contact: elisa@elisareiter.com.

CHANGES IN RESIST-REFUSE DYNAMICS CHECKLIST (CRDC)

Leslie Drozd, Ph.D., Michael Saini, Ph.D., Marjorie Gans Walters, Ph.D., Barbara Jo Fidler, Ph.D., & Robin Deutsch, Ph.D., ABPP

Rejected/Resisted Parent's (RP's) Name _____
 Favored Parent's (FP's) Name _____
 Child's Name, Age, & DOB (Please Use One Form Per Child.) _____
 Name of Rater: _____ Rater is (Circle one.): Family Therapist/ Parent Coordinator/Case Manager /Judge
 Date Form Filled Out: _____

A. FOR THE CHILD

(i) Behavioral Indices For The Child (Rejected Parent).	(RP)				
	N	R	S	O	VO
1. Child greets the parent in a friendly manner (e.g. at minimum child says hello).					
2. Child has ongoing contact with parent without signs of resistance.					
3. Child can comfortably sit in a room with parent.					
4. Child participates in activities with parent (e.g. plays games, goes places like movies, builds with Legos, etc.).					
5. Child engages in spontaneous conversations with parent.					
6. Child engages in respectful conversations with parent.					
7. Child seeks/maintains relationships with the parent's extended family.					
8. Child does homework with parent.					
9. Child accepts reasonable limit setting by parent.					
10. While with the parent, child freely talks about their experiences while in the other parent's care.					
11. While with the parent, child speaks positively about the other parent.					
12. Child seeks out the parent's advice with specific problems or issues.					
(i) Behavioral Indices For The Child (Favored Parent).	(FP)				
	N	R	S	O	VO
1. Child greets the parent in a friendly manner (e.g. at minimum child says hello).					
2. Child has ongoing contact with parent without signs of resistance.					
3. Child can comfortably sit in a room with parent.					
4. Child participates in activities with parent (e.g. plays games, goes places like movies, builds with Legos, etc.).					
5. Child engages in spontaneous conversations with parent.					
6. Child engages in respectful conversations with parent.					
7. Child seeks/maintains relationships with the parent's extended family.					
8. Child does homework with parent.					
9. Child accepts reasonable limit setting by parent.					
10. While with the parent, child freely talks about their experiences while in the other parent's care.					
11. While with the parent, child speaks positively about the other parent.					
12. Child seeks out the parent's advice with specific problems or issues.					
(ii) Emotional Indices For The Child (Rejected Parent).	(RP)				
	N	R	S	O	VO
1. Child spontaneously displays affection towards parent in front of other parent.					
2. Child is comfortable being engaged in activity with parent at same time they are in front of other parent.					
3. Child is comfortable sharing feelings with the parent (e.g. worries, needs, fears, etc.).					
4. Child approaches parent for comfort.					
5. Child displays affection towards parent (e.g. sitting appropriately close-by, age-appropriate hugging, cuddling).					
(ii) Emotional Indices For The Child (Favored Parent).	(FP)				
	N	R	S	O	VO
1. Child spontaneously displays affection towards parent in front of other parent.					
2. Child is comfortable being engaged in activity with parent at same time they are in front of other parent.					
3. Child is comfortable sharing feelings with the parent (e.g. worries, needs, fears, etc.).					
4. Child approaches parent for comfort.					
5. Child displays affection towards parent (e.g. sitting appropriately close-by, age-appropriate hugging, cuddling).					

Deutsch, R. Drozd, L., & Ajoku, C. (2020). Trauma-informed interventions in parent-child contact cases, In B. Fidler & N. Bala (Eds), Parent-child contact problems: Concepts, controversies & conundrums. Family Court Review, vol 58(2).

Ratings: N=Never, R=Rarely S=Seldom, O=Occasionally, VO=Very Often.

(ii) Cognitive Indices For The Child (Rejected Parent).					(RP)
	N	R	S	O	VO
1. Child has some age-related capacity to see the “good” and the “bad” in parent.					
2. Child demonstrates age-appropriate capacity for seeing different perspectives as new situations arise, both within the family and within the child’s social relationships.					
(iii) Cognitive Indices For The Child (Favored Parent).					(FP)
	N	R	S	O	VO
1. Child has some age-related capacity to see the “good” and the “bad” in parent.					
2. Child demonstrates age-appropriate capacity for seeing different perspectives as new situations arise, both within the family and within the child’s social relationships.					

B. ABOUT EACH PARENT

(i) Behavioral Indices About Each Parent (Rejected Parent).						(RP)
	N	R	S	O	VO	
1. Parent supports the child’s relationship with other parent.						
2. Parent consistently maintains positive support for other parent’s involvement in child’s life.						
3. Parent demonstrates ability to understand/accept the child without blaming.						
4. Parent expresses hope that the child will have the best possible relationship with other parent.						
5. Parent does <u>not</u> tell or convey indirectly to the child any negative views of other parent.						
6. Parent takes responsibility for his/her role in causing disruption of the child’s relationship with other parent.						
7. Parent includes other parent in child’s life (e.g., medical, academic, social).						
8. Parent complies with the court-ordered parenting plan.						
9. Parent can be at the same activity with other parent.						
10. Parent communicates directly with other parent, rather than expecting child to carry messages back & forth.						
11. Parent communicates respectfully with other parent.						
12. Parent greets other parent cordially during transitions in front of child.						
13. Parent demonstrates good emotional boundaries with child.						
14. Parent supports the child’s activities by ensuring child attends the activity.						
15. Parent supports child’s social relationships with peers.						
16. Parent redirects child to discuss any complaints/commentary/concerns about other parent with that parent.						
17. Parent demonstrates reasonable progress towards treatment goals.						
18. Parent demonstrates in observable actions the ability to <u>not</u> expose their child to their own negative beliefs & fears about the other parent.						
(i) Behavioral Indices About Each Parent (Favored Parent).						(FP)
	N	R	S	O	VO	
1. Parent supports the child’s relationship with other parent.						
2. Parent consistently maintains positive support for other parent’s involvement in child’s life.						
3. Parent demonstrates ability to understand/accept the child without blaming.						
4. Parent expresses hope that the child will have the best possible relationship with other parent.						
5. Parent does <u>not</u> tell or convey indirectly to the child any negative views of other parent.						
6. Parent takes responsibility for his/her role in causing disruption of the child’s relationship with other parent.						
7. Parent includes other parent in child’s life (e.g., medical, academic, social).						
8. Parent complies with the court-ordered parenting plan.						
9. Parent can be at the same activity with other parent.						
10. Parent communicates directly with other parent, rather than expecting child to carry messages back & forth.						
11. Parent communicates respectfully with other parent.						
12. Parent greets other parent cordially during transitions in front of child.						
13. Parent demonstrates good emotional boundaries with child.						
14. Parent supports the child’s activities by ensuring child attends the activity.						
15. Parent supports child’s social relationships with peers.						
16. Parent redirects child to discuss any complaints/commentary/concerns about other parent with that parent.						
17. Parent demonstrates reasonable progress towards treatment goals.						
18. Parent demonstrates the ability to <u>not</u> expose their child to their own negative beliefs & fears about the other parent.						

(ii) Emotional Indices About Each Parent (Rejected Parent).						(RP)				
						N	R	S	O	VO
1. Parent demonstrates the ability to emotionally regulate.										
2. Parent demonstrates flexibility in their emotional responses.										
3. Parent is able to differentiate their emotions from their child's feelings.										
4. Parent demonstrates sensitivity & empathy regarding their child's experiences.										
5. Parent supports other parent's autonomy with the child.										
(ii) Emotional Indices About Each Parent (Favored Parent).						(FP)				
						N	R	S	O	VO
1. Parent demonstrates the ability to emotionally regulate.										
2. Parent demonstrates flexibility in their emotional responses.										
3. Parent is able to differentiate their emotions from their child's feelings.										
4. Parent demonstrates sensitivity & empathy regarding their child's experiences.										
5. Parent supports other parent's autonomy with the child.										
(iii) Cognitive Indices About Each Parent (Rejected Parent).						(RP)				
						N	R	S	O	VO
1. Parent accepts that the child wants to have contact with both parents (without raising the past and reverting to blaming the child's prior hostility/rejection on the other parent).										
2. Parent accepts that relationship with other parent is important for child and does <u>not</u> revert to past beliefs.										
3. Parent demonstrates an ability to separate his/her own negative thoughts and feelings about the other parent from the child's needs to have a relationship with other parent (e.g. statements such as "your other parent left us" are absent).										
(iii) Cognitive Indices About Each Parent (Favored Parent).						(FP)				
						N	R	S	O	VO
1. Parent accepts that the child wants to have contact with both parents (without raising the past and reverting to blaming the child's prior hostility/rejection on the other parent).										
2. Parent accepts that relationship with other parent is important for child and does <u>not</u> revert to past beliefs.										
3. Parent demonstrates an ability to separate his/her own negative thoughts and feelings about the other parent from the child's needs to have a relationship with other parent (e.g. statements such as "your other parent left us" are absent).										

Overview of the Checklist.

The Changes In Resist-Refuse Dynamics Checklist (CRDC) is a checklist designed to give professionals guidelines through which to observe, assess, and understand the behavioral, emotional and cognitive changes that need to occur to resolve these parent-child contact problems.

- It is important to note that the CDRC should not replace a comprehensive screening of violence.
- The CDRC is not a diagnostic tool.
- The CDRC may work best when combined with other tools for assessment.
- The CDRC should only be used by trained professionals.
- The CDRC may not be appropriate for use with all cases.

Instructions for completing the CDRC.

Please fill in the names of the Rejected/Resisted Parent's (RP) and the Favored Parent (FP) in the chart below. For each item below, please indicate in the last three months whether the item has occurred N=Never, R=Rarely S=Seldom, O=Occasionally, VO=Very Often. There are no wrong answers. Please complete this to the best of your knowledge. If you don't know, please leave your answer blank.

Dimensions of the CDRC.

The CDRC has two sections: (1) the child; and (2) the parent. Each section is divided into behavioral, emotional and cognitive indices. In turn, each section is sub-divided into a part for the favored parent and a part for the rejected parent to fill out.

Scoring the CDRC.

This rating form is designed to be filled out by a professional who has observed (or heard testimony about) the parent-child interactions. This form is not designed to be scored.

Application of the CDRC.

The use of the CDRC is for trained professionals (i.e., therapists, attorneys and judges). Should a professional wish for a parent to fill out the form, it will need to be adapted and personalized. The professional may use this checklist to set treatment goals and to facilitate a discussion with each parent about their measures of progress with their child(ren). For example, this might be filled out at the start, at various stages during, and at the end of therapy.