

STRUCTURED INTERVENTIONS IN A PARENTAL ALIENATION CASE

**Brian Ludmer,
B.Comm., LLB.,
(416) 781-0334
brian@ludmerlaw.com
www.ludmerlaw.com**

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CANADIAN, EH?



Reasons for Canadian Progress

- **Sharing cross-country jurisprudence**
- **Leading legal and clinical and academic experts speak and write and contribute to organizations and conferences**
- **Jurisprudence style - lengthy and transparent decisions**
- **Broad access to decisions through CanLII and Westlaw and Quicklaw**
 - ❖ **No practice of “unpublished” decisions as in US**
- **Head start:**
 - ❖ **Pamela Richardson (May 2006 publication of “A Kidnapped Mind” and “The Dash Foundation”) and large 2009 three-day Conference in Toronto**

PRECEDENTS TO ACCOMPANY PRESENTATION

PRECEDENT MATERIALS AVAILABLE

- **Statement of Law on Alienation and Remedies**
- **Statement of Law on Judicial Interviews**
- **Statement of Law on Voice of the Child**
- **Statement of Law on Discounting Views of Children's Lawyer**
- **Statement of Law on Credibility**
- **Failed Therapy Quotes from the Jurisprudence**
- **Statement of Law on Review Orders**
- **Reading List – How Memory Works**
- **Reading List – Suggestibility, Delusion and Lying**
- **Reading List – Parenting**
- **Notice of Motion – Interim Intervention With Parenting Covenants**

Parenting – What is Normative

- **Parent – child negotiations and conflict is normal**
 - ❖ The family system may need assistance in managing
 - ❖ Hierarchy and inter-generational boundaries protected
- **Parents must model resilience and emotional regulation**
- **“The job of a parent is to parent”**
 - ❖ guidance, boundaries, incentives and consequences, progressively employed
- **The duties of co-parents to support each other**
 - ❖ Managing conflicting parenting styles
 - ❖ Supporting decisions in the other home

The Science of Parenting

▪ Parenting Topics (20 pages)

- ❖ General
- ❖ Parenting after separation
- ❖ Communication, Boundaries and Discipline
- ❖ Complex Needs
- ❖ Adolescents
- ❖ Family systems, resilience and change
- ❖ Gender-specific and internet issues
- ❖ Fatherhood
- ❖ Emotional Regulation, Resilience

What is Normative Parenting?

- No science being applied by Courts and evaluators
- Debate in Recent Books: *“The Collapse of Parenting”* and *“All Joy and No Fun – The Paradox of Modern Parenthood”* and *“Discipline Without Damage”*
- University Level Family Studies Texts and the “Normative Parenting Project”
- Formal evidence-based parenting inventories
- Interest, attitude, aptitude, flexibility
- Personal qualities of the parent: general level of adjustment; adequacy of coping skills; interpersonal accessibility; able to model behaviours they have to teach, including resilience
- Emotional Intelligence/Social Intelligence
- Transitory Issues and the But-For test

**COMPETING NARRATIVES
COMPLICATE THE
ASSESSMENT, TREATMENT,
MANAGEMENT AND
ADJUDICATION OF ALIENATION
CASES**

Competing Narratives and Credibility

▪ Excerpts from A.F. v. J.W., 2013 ONSC 4272

[36] I do not find A.F. to be credible. When looking at all of my findings, from the prior trial together with her testimony during this review, I find that A.F. has continued to demonstrate the same pattern of misrepresentation of events I had seen in advance of my June 27, 2011 reasons. **I find that this hamster incident is another example of A.F. saying that she supports the children's involvement with their father, yet sending the exact opposite message to her children through her actions.**

[133] A.F. did not seize upon the opportunity given to her by my June 27, 2011 order. **Although she became adept at articulating support for the access between the children and their father, it is clear now that her articulation was hollow, completely devoid of any meaningful substance.** The sad truth is that A.F. never gave the children permission to love and respect their father.

[137] The mother was given the opportunity to achieve expectations that were spelled out for her in my judgment of June 27, 2011. **She admitted in her testimony on this review that she never read that judgment and only relied on her memory of what was said orally, which is telling of her commitment to adhere to the order.**

Examples and Sources of False Narratives

- **Misattribution**
- **Misrepresentation**
- **Misunderstanding**
- **Outright fabrication**
- **Mistake, Error or misbehavior pitched as inherent and irredeemable character flaws**
- **Failure to learn and grow; Failure to forgive and forget**
- **Illogic and emotional reactions; Concrete thinking**
- **Inferences and assumptions (The Benny Hill Principle)**

Favoured Parent's Narrative

- ❖ Framing the issue in a way that absolves them of responsibility for cause or solution
- ❖ Hypocritical assertions of “encouraging” access, despite alleging rejected parent as abusive and child as justified
- ❖ Elevates child’s decision-making and “feelings” over all else
- ❖ All positions involve substantive delay and stagnation
- ❖ Imposing conditions on access: “child needs to feel safe and secure”, “child needs a safe environment for access”, “child needs an advocate/mediator in all interactions with rejected parent”
- ❖ The only therapy they will agree to is framed to not involve them or to just give the child a platform and to make it seem like they are interested in solutions – access in parallel with therapy is rejected and then the therapist is co-opted to go slow in recommending access, as the therapy confuses roles
- ❖ No matter how much supportive evidence re rejected parent (courses, plan of care, books, all-clears from mental health and from CAS, many affidavits from collaterals, pictures and movies from the past) no change of position/views
- ❖ Parenting style conflict and refusal to consider the breadth of “normative” parenting

Rejected Parent's Narrative

- ❖ Everyone is judging me and micro-managing my parenting; I am forever on the defensive. I am being judged while suffering from loss of children, impact/loss of career, and PTSD. I am a normative parent – no worse than average Mom.
- ❖ Issues that are capable of resolution if people proceed with a positive goal and good faith are elevated to inherent flaws in me or my parenting that are portrayed as incapable of change
- ❖ Historical issues that had long ago been resolved or managed are suddenly dredged up (prior errors, prior mental health issues) even though they were not an insurmountable issue while the family was intact
- ❖ Nobody (therapists, lawyers, Court, therapists) understands the “Alice-in-wonderland” and “Kafkaesque” nature of my world. I have always been a loving, empathic and devoted parent. What happened?
- ❖ Nothing I do is good enough (courses, books, personal therapy, parenting coach) or will answer the issues – I solve one, there is no relational movement from the children or my ex, just an elevation of the other 24 issues and the creation of new issues
- ❖ I keep getting ask to “apologize” / “confess” to things I didn't do or are taken out of context. I know they are just looking for further “proof” of my allegedly inherent abusiveness, but the therapist was actually siding with the child.

Children's Narrative

- ❖ **The outward presentation**
- ❖ **The inner child**
- ❖ **Neuroscience**
- ❖ **Guilt**
- ❖ **Grief**
- ❖ **The children's lawyer's narrative is not my narrative**

Children's Evidence in PA Cases

- **A significant problem we struggle with in all cases**
- **Misplaced emphasis on the filter/source**
 - ❖ Police
 - ❖ Children's counsel
 - ❖ Child protection authorities
 - ❖ Custody evaluator
 - ❖ Therapist
 - ❖ Schools
- **If children and families exhibiting maladaptive behavior after separation constitute a “special population”, then specialized training and experience is required to receive their “voice”.**

Hidden Agendas Colour The Narratives

- ❖ *“days for dollars”*
- ❖ The “40% cliff” in Canadian child support laws
- ❖ Spite/vindictiveness/fear - projection/power and control/gatekeeping
- ❖ Personality disorders / mixed or just shy of diagnosis
 - ❖ Relevant disorders 10% of population but many times higher in family law PA litigants – high base rate
- ❖ Repartnering – deliver the children as the fruits of the new union
- ❖ Intrusive/enmeshed parenting styles
- ❖ Inability to reconcile to two different but normative parenting styles

Mistaken Court Narratives

- ❖ The usual admonishments of “*Play nice, put the kids first, stay out of court, go do unstructured therapy, both parents are to blame equally*”, plays into the hands of the alienator
- ❖ Reflexive belief in children’s hearsay statements despite studies of children lying to protect themselves or to influence a result or erroneous delegation of the problem to OCL/GAL/Assessment/Therapists/Mediators
- ❖ Lack of understanding of urgency and potential impact of lost memory/history, lost or impaired critical thinking skills, loss of sense of permanence of foundational relationships
- ❖ Little understanding of schools of therapy, prerequisites for therapy, pervasive failures of therapy
- ❖ Little understanding of available diagnostics or psychological processes, despite reams of jurisprudence
- ❖ Lack of understanding of jurisprudence on parental duties to foster compliance with Court orders – “encourage” vs “require”; Children of 12/13/14/15 are old enough to decide; Court Orders are not absolute until varied – just a guide
- ❖ Potential Biases: Voice of the child; Pre-separation division of parenting time governs; Gender; Undue caution; Allegations true until disproven and if disproven, no consequences to false allegor

Mistaken Therapist Narratives

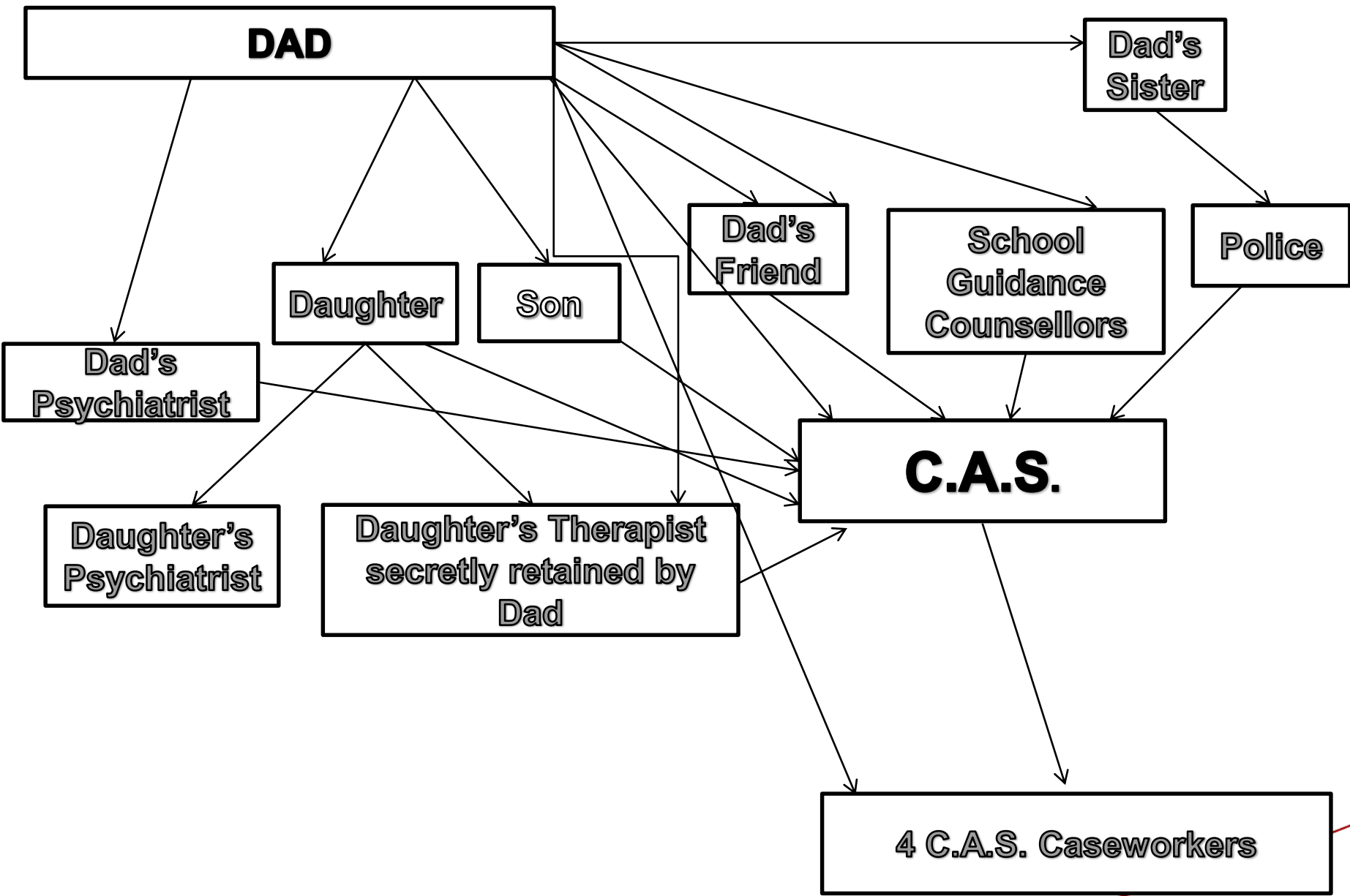
- ❖ Go slow – if I push too hard the children will stop coming. Baby steps so I can demonstrate progress
- ❖ I am afraid of the alienating parent and must avoid a complaint
- ❖ It's not my job to enforce the Court Order re access
- ❖ Non-therapeutic access is not essential – I can solve this in therapy even though I have don't practice strategic family systems and no success in past
- ❖ I can't push the aggressive parent, so I will push the less aggressive parent
- ❖ I accept whatever the children say and never challenge them or ask them to apologize to their parent
- ❖ I am doing individual therapy instead of family systems interventions – so I refuse to be directive/authoritative and unwittingly make things worse
- ❖ I don't have to read everything the rejected parent gives me, or speak to their collaterals, to understand the previous background
- ❖ I must observe the “therapeutic alliance” even if goals of the therapy not met
- ❖ Refusal to call a halt in the face of lack of good faith participation and to write a letter for Court confirming why (properly done in *Huckerby v. Paquet*, 2014 Saskatchewan); Must cease ineffective therapy under most Codes
- ❖ Therapist fragmentation

Missing Narratives

- ❖ Memory/history devalued and lost – kids focused on the present and future
- ❖ The “BUT-FOR TEST”– boundaries of acceptable child-behaviour – child’s pathogenic behaviour is either the product of TP outside broad normal-range parenting or AP inducing such behaviour
- ❖ Parenting = guidance, boundaries, incentives and consequences
- ❖ Co-parenting should be as supportive as during the marriage - instead we get the “waiter analogy” - “it’s not my table”
- ❖ Empathy, morality, spirituality – see *“Raising a Moral Child”*, *New York Times*, April 13, 2014, *Sunday Review*, p.1
- ❖ Positive (actively promote other parent) vs negative covenants
- ❖ Urgency – legally, therapeutically, relationally, mental health
- ❖ Limits on counsel for the alienating parent and counsel for the child
- ❖ This is a child-protection issue, not simply a custody/access issue
- ❖ “Normative Parenting”

THE POWER OF FALSE NARRATIVES

- Favoured parent and the children anchor on them as an excuse for their own refusal to change and forgive and forget and be accountable for their own behaviours
- Lawyers, therapists, assessors, parental coordinators, Police, child protection workers and Judges get confused or paralyzed with indecision
- A “tie” is as good as a “win” for the favoured parent, since they can hide behind the misconceptions involved in the label “hybrid case”, with the result that the dysfunctional family system is never restructured



CREDIBILITY ASSESSMENTS

- **Courts assess the credibility of the adults in the case, including the parents, using common unscientific methodologies**
- **Courts rarely comment on the credibility of assertions from the children**
- **Courts do, however, frequently comment on findings or concerns about parental programming/influence of the children**
- **Children's counsel have a duty to advise the Court of concerns about capacity to instruct or risk of lack of independence – but rarely do so**

Jurisprudence on Failed Therapeutic Interventions and the Success of Structured Interventions

- **See handout**
- **Broad recognition of the failure of traditional therapy but not cohesively advanced and rarely with an understanding of what “therapy” actually is and is not**
- **The key thought recognized in the jurisprudence is that without complete buy-in by the AP, and communication of that to the children, a therapist can achieve nothing so long as the children can continue to receive contra messaging**

WHY THE NEED FOR A STRUCTURED INTERVENTION AND HOW DOES IT RELATE TO THE ULTIMATE REMEDY OF A PROTECTIVE SEPARATION WITH A SPECIALIZED PSYCHOEDUCATIONAL PROCESS

PROTECTIVE SEPARATION JURISPRUDENCE

- **Well established in North America, particularly in Canada**
- **Proven potential to work**
 - ❖ Evidenced by follow-up jurisprudence about how quickly the favoured parent is allowed back in while the family is monitored for regression
 - ❖ Judicial recognition about the gains made during the protective separation period
- **Subsequent failures evidenced in the jurisprudence on regression and further remedies**
 - ❖ Attributable to treating the symptoms but not the causes

Insight from AF v. JW (2008 – 2016)

- **AP found in Contempt and having fostered distortions June 2011 (A.F. v. J.W., 2011 ONSC 1868);**
- **Custody reversed after no change in behaviour (A.F. v. J.W., 2013 ONSC 4272)**
- **Children’s therapist counted on AP’s therapist changing AP’s internal working model about TP; Children’s therapist moved too slowly and without clear milestones and therapeutic goals and was not using SFS intervention, nor following Court mandate; unresolved parenting styles and “control” issues; unresolved AP attitudes**
- **CA Decision 2015**
- **Review Hearing Decision 2016 ONSC 3678 recognized importance of 2.5 year protective separation, children’s new resilience and unrepentant AP attitudes**

Protective Separation Jurisprudence Issues

- **Still only a remedy of the last resort**
 - ❖ A very long and expensive and uncertain process
 - ❖ Highly damaged family systems
- **Need for expert evidence and a Trial to get the remedy**
- **Formal program cost and availability**
- **Need to first demonstrate multiple failures of varying traditional therapeutic and parental coordination processes**
- **Remedy is by nature interim only**
- **Improperly structured intervention which often cannot sustain the initial gains made**

THE STRUCTURED INTERVENTION AS A PRECURSOR TO A PROTECTIVE SEPARATION REMEDY

and

THE STRUCTURED INTERVENTION AS A FOLLOW-UP PROCESS TO SUSTAIN THE GAINS MADE FROM A PROTECTIVE SEPARATION REMEDY

Design Elements for Structured Intervention

- **Avoids therapeutic alliance – the entire family system is the “client”**
- **Empowers the one central MH practitioner**
- **Goal-oriented – definition of “success” Handout**
- **Time-limited with milestones**
- **Covenants and Accountability for all participants**
- **Judicial oversight and problem-solving**
 - ❖ Today’s 5:30 pm call with a Judge
- **Everyone understands the consequences of failure – a protective separation or “time-out” for the favoured parent**

Covenant Pattern for the Favoured Parent

- **Positive Covenants to promote the TP**
- **Negative Covenants**
- **Covenants to interfere with their personal narrative – disarm and disempower them**
- **Covenants to cause healthy behavior when with the TP and take ownership of that (avoiding the “waiter analogy”)**
- **Customized covenants to deal with specific incidents and trends and myths in the case and to reintroduce empathy, forgiveness and healing as normal family dynamics**
- **Covenants/therapy to deal with enmeshment, intrusive parenting, histrionics, separation anxiety**

Covenant Pattern for the Targeted Parent

- **While we don't judge them for their reactive behavior to provocations and we don't re-victimize them by forcing them to apologize for matters that they assert never happened, nonetheless they must make changes.**
- **Thick skin, project empathy, smile, speak softly, deliver unconditional love and optimism for the future, have fun, stock favoured foods, compromise on their otherwise normative parenting, pick your spots, seek advice, read/learn/be certified.**
- **Practice “state of the art parenting”**
- **Demonstrate resilience**

Children's Needs, Responsibilities vs Wants

- **Children have duties to assist the family in restructuring after divorce and in adapting to two homes.**
- **It is normative and expected for children to adapt to normative parenting rather than over-empowering the children just because of the separation**
- **Children must not play one parent off against the other**
- **It is not acceptable for children to dictate the access schedule**
- **Children must accept the inconveniences of transiting back and forth**
- **There are standards for acceptable children's behaviour**

The Children's Charter of Rights and Responsibilities - RIGHTS

- The children have the right to love and express love, verbally and through hugs, to each of their parents equally, free from any feelings of disloyalty or upset of the other parent.
- The children have the right to cherish and think highly of each of their parents and the right to be free from any disparagement, negative opinions or criticism of one parent by the other parent or by members of a parent's extended family and friends.
- The children have the right to demonstrate affection to each of their parents in the presence of the other and in the presence of their respective extended families.
- The children have the right to describe positively and with enthusiasm their life with one parent to the other parent and the right to expect that this expression will be received openly and warmly and encouraged.
- The children have the right to not have to manage the feelings of a parent by demonstrating loyalty or conveying dislike of the other parent's home.
- The children have the right to see their parents get along and be cordial with each other.

The Children's Charter of Rights and Responsibilities - RESPONSIBILITIES

- **The children are responsible for dealing with each of their parents fairly, respectfully and with love and affection.**
- **The children should not seek to use one parent to intervene or overrule parenting decisions made at the other parent's house.**
- **The children are responsible to respect the privacy of each of their parents' homes.**
- **If the children are exposed to disparagement of one parent by the other or by their extended family, the children have the responsibility to assert themselves and ask that their right to think highly of both parents be respected.**
- **The children are responsible for managing their own behavior in a manner which will support their rights and responsibilities and their parents' parenting plan.**
- **The children have the responsibility to maintain a balanced, fair and independent attitude towards their parents and to not take sides on any issues with one parent against the other.**
- **The children have the responsibility to not behave in the manner depicted in the Court Decisions that resulted in the current situation in the family.**

“Light” therapy vs. “Reconciliation Therapy”

- **Open vs. closed**

- ❖ Privacy laws (such as The Personal Health Information Privacy Act) allow “competent” estranged children to prohibit the sharing of their file with the TP, even though AP gets it

- **Child therapist vs. multi-client**

- **Goal oriented: “reconciliation” – or not**

- **Timeline after which return to Court**

- **Avoid the “therapeutic alliance” regarding each of therapist/coach for AP and therapist for children**

- **Children told that if they are nice to TP in therapy it will be used against AP in Court – instead they actively try to justify their estrangement**

- **Court-Ordered or not – forcing AP to cooperate**

- ❖ Note that *Healthcare Consent Act / Child and Family Services Act* allow adults and children of 16 years to refuse therapy

- ❖ Court Order re therapy as a condition of custody/access

“Light” therapy vs. “Reconciliation Therapy”

- **Chose the therapist or team carefully – you want people who are not afraid to take a stand**
 - ❖ Wishy-washy or inconsistent statements are not helpful in solving the dynamic
 - ❖ Avoid “individual therapy” and instead chose/specify Strategic/Structural Family Systems Therapy
- **Some early therapeutic input can be useful so long as the case itself is moving inexorably towards trial**
 - ❖ Insight into what the children are saying
 - ❖ Exposes the numerous “complaints” that are outright fabrications or distorted out of all proportion
 - ❖ Creates a fixed “moment in time” snapshot that can help identify PAS if new complaints arise afterwards
 - ❖ Forces the AP to get involved in solving the situation or to expose that they have no interest in actually solving the situation

AVOID THERAPIST FRAGMENTATION

- **What does that mean?**
 - ❖ Securities Law Root
 - ❖ Individual therapists can work at cross purposes;
 - ❖ Gaps in services and analysis

Structuring Reconciliation Interventions

1. **Central Coordinator, Multi-party and Fully-Open**
2. **Using Structural Family Systems Methodology**
3. **Goal-oriented**
4. **Time-Limited (6 months) and Milestones (monthly)**
5. **Active Case Management by a CM Judge**
6. **Everyone on the Same Page Premises**
 - ❖ Mea Culpa; acceptance of TP as safe, loving competent and available
7. **Must have parallel non-therapeutic access**
8. **Prohibit harmful narratives**
9. **Positive and negative parental covenant patterns**

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