

Don't Alienate the Kids
Raising Resilient Children
in a High Conflict World

15th Annual Child Abuse Prevention
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Alienation: What it Is

- Child resistance or refusal to spend time with one parent, for no good reason:
 - “I don’t like the way my father wears his hair.”
 - “My mother’s no good at math.”
- Child speaks in extreme terms:
 - “I don’t ever want to see my father again.”
 - “My Mom is the most incredible person.”
 - “He/she understands me. We agree on everything.”
- A common symptom of high-conflict cases: lots of emotions, lots of blame, lots of all-or-nothing thinking

Alienation: What it Isn't

- Not a gender issue: It can be the mother or the father who is rejected, depending on the case.
- Not a typical symptom of child abuse or domestic violence: Most abused children are not alienated from their abusive parent – they just want abuse to stop.
- Not a “syndrome”: Courts of Appeal and mental health professionals have not accepted Parental Alienation Syndrome (PAS) – Not included in DSM-IV or DSM-5.
- Not clearly caused by one incident or one parent: Family systems issue - needs family systems treatment involving **both parents with the child/ren.**

The Original Theory: P.A.S.

- Richard Gardner, M.D. introduced PAS term in 1980's His book: **Parental Alienation Syndrome and the differentiation between fabricated and genuine child sex abuse allegations** (1987).
- In 2001 article he states: "the primary cause of the disorder is the programming parent who hopes to gain leverage in court by indoctrinating a campaign of denigration into the child against a good, loving parent." *Family Court Review*, 39, July 2001, 611-621.

Current Resources on P.A.S.

- *Divorce Poison* (2010), 2nd Ed. by Richard Warshak He defines P.A.S. as when a child rejects a parent "without justification" and "under the influence of the other parent." Says cases of children alienated with justification are not PAS.
- *Adult Children of Parental Alienation Syndrome* (2007), Amy Baker. She followed up on about 40 cases with recommendations for how parents should respond.
- *The International Handbook of Parental Alienation Syndrome* (2006)
31 Mental health and legal professionals contributed. Edited by Gardner, Sauber, and Lorandos

Critique of P.A.S.

- Joan Kelly and Janet Johnston:
The "Alienated Child" *Family Court Review*, 39, July 2001, 249-266
Agree some children are alienated, just disagree over the cause: Alignment vs. rejection vs. estrangement
- 11-15% of all divorces align w one parent and reject/resist other; 20-27% alienated in custody litigation: *Fam. Court Review*, 42, Oct. 2004, 622
- P.A.S. rejected by DSM-5 last year.

Legal Avoidance of Parental Alienation "Syndrome"

- Rarely accepted as a syndrome, because:
Not generally accepted by mental health community (Frye and Daubert tests)
- Hundreds of appellate court cases nationwide include phrase "parental alienation," but most avoid making any decisions about the term
- Many cases have found alienating behaviors
- Cases focus on parent behaviors and which parent most supports the other

Current Literature

- Barbara Jo Fidler, Nicholas Bala & Michael A. Saini: ***Children Who Resist Postseparation Parental Contact*** (2013). Authors examine full range of issues and studies, emphasizing Canada, including "child's voice" in process.
- Kathryn Kuehnle and Leslie Drozd: ***Parenting Plan Evaluations: Applied Research for the Family Court*** (2012). Authors examine research and critique studies, especially about alienation.

Current Literature

- Bill Eddy: ***Don't Alienate the Kids: Raising Resilient Children While Avoiding High Conflict Divorce*** (2010). Author emphasizes reducing emotional contagion from high conflict parents.
- Bill Eddy: ***The Future of Family Court: More Structure, More Skills and Less Stress*** (2012)
- Janet Johnston, Vivienne Roseby & Kathryn Kuehnle: ***In the Name of the Child*** (2009) 2nd Ed. The authors discuss the whole family dynamics as cause and the need for whole family involvement in therapy.

The Underlying Personality Problem:

- One or both parents with a “high conflict” personality
- A long-standing dysfunctional pattern of:
 - *All-or-nothing thinking*
 - *Unmanaged emotions*
 - *Extreme behaviors*
 - *Preoccupation with* 1 or more Targets of Blame
 They may have a personality disorder or traits
- They often pass high conflict traits to their children, who may also develop personality disorders

“1000 Little Bricks” Personality Theory of Alienation

1. Primarily one or both parents with **personality disorders** or **traits**, with severe cognitive distortions (all-or-nothing thinking), chronic mood swings, insecure attachments & “splitting” (people are “all-good” or “all-bad”).
2. Primarily **unconscious**: Parent(s) lack self-awareness of their automatic and repeated sharing of intense emotions and attitudes with their children.
3. Primarily **non-verbal**: Child absorbs negative emotions through non-verbal cues, especially parent’s intense fear and anger, jokes, absence of positive statements about other.
4. It’s been building **since birth** and inadvertently reinforced by both parents: It’s a 1000 little bricks that built this wall.

Techniques for Managing Alienation Cases

1. Explain state’s policy favoring both parents significantly involved in raising the children
2. Avoid excessive anger at either parent
3. Require each parent to say 3 positive qualities of other parent
4. Require each parent to say 3 ways he or she is going to protect the children from their upset emotions during the separation or divorce.

See Article: *Is Your Child Alienated?* (Suggests 7 tips)

Techniques for Managing Alienation Cases

Admonish parents specifically not to:

- Discuss the case with the child/ren
- Show court papers to child/ren
- Tell child/ren when hearings will occur
- Tell child/ren other parent has a “problem”
- Interfere with other’s parenting time, including: scheduling activities, appointments, family/friend
- Compare parenting abilities or traits
- Discuss financial issues with child/ren
- Yell or cry about other parent in front of children
- Ask children to “report” on other parent
- Discuss reasons for divorce, blaming other parent

Techniques for Managing Alienation Cases

Avoid eliminating one parent, even temporarily:

- Avoid “no contact” orders during investigations
- Use supervised contact, if safety allegations
- Use “reporting” supervisor, who can observe

Order both parents into parent class; counseling

- Family counseling with one family therapist
- New Ways for Families (see later slides here)

Schedule a Review Hearing:

- To keep parents on good behavior
- 3, 6, or 12 months; whatever fits circumstances

Treatment Resources - Intensive

Family Bridges Workshops – Richard Warshak, Randy Rand
 Intensive long-weekend experience for child and formerly rejected parent; may immediately follow change of custody
<http://warshak.com/services/family-bridges.html>

Welcome Back Pluto – DVD (83 minutes) for children and parents

Overcoming Barriers Family Camp – Matthew Sullivan, et al
 Summer camps for whole family. 5-day intensive experience
<http://overcomingbarriers.org/programs/>

Treatment Resources - Counseling

New Ways for Families – Structured short-term counseling for each parent with a workbook; then 3 parent-child sessions with each parent – Developed by Bill Eddy’s High Conflict Institute: See *New Ways for Families* Workbooks www.NewWays4Families.com

Family Restructuring Therapy – Stephen Carter, et al Intervention/Counseling method with at least 3 therapists; intervening in alienation cases and building co-parenting skills.

<http://thepracticeinstitute.com/event/stephen-carter-ph-d-family-restructuring-therapy-interventions-for-high-conflict-divorce>

See the book: *Family Restructuring Therapy: Interventions with High Conflict Separations and Divorces*. S. Carter (2011)

A Severe Lack of Skills?

Can they learn skills for resilience & teach kids:

Flexible Thinking?

Managed Emotions?

Moderate Behavior?

Check themselves?



New Ways for Families

- Started in San Diego Family Courts 2009
- In 2011, two courts in Alberta (Calgary and Medicine Hat) received \$500k grants to use New Ways 3 years.
- In 2013, two counties in/near Austin, Texas trained and ordering cases; Bozeman, Montana using online.
- Up to individual judge to order it, or parties to agree to use it (usually don’t volunteer – takes pressure).
- A workbook-driven counseling process.
- Designed for high conflict families and issues, including D.V., Child Abuse and Alienation.

new ways FOR families

Structure

“Skills Before Decisions”

Four Steps, 6 -16 weeks:

- Step 1: Getting Started (Order or Agreement)
- Step 2: Individual Counseling (Focus on Skills)
- Step 3: Parent-Child Counseling (Teach Skills)
- Step 4: Family (or Court) Decision-Making

new ways FOR families

Paradigm Shifts of New Ways

- *Skills* before decisions
- *Both* parents expected to work on themselves
- *Parents* to **teach children** and **hear children** (with structured conversations in workbook)
- *Professionals* primary role is to teach skills and overcome resistance; use positive feedback
- *Focus* is on teaching small skills in small steps
- *Guide* parents to use skills to maximum ability

new ways FOR families

New Ways Designed for Alienation Cases

- BOTH parents must attend and practice skills
- Emphasis is on teaching skills, not decisions
- Workbook writing exercises require:
 - Shifting away from all-or-nothing positions
 - Managing emotional contagion
 - Positive statements about other parent to child
 - Ways each parent will support other parent
- 3 Parent-child sessions with each parent
- Court follow-up (if necessary)

new ways FOR families

Case Example

Teenage Daughter: Refused to see father 6 months.
 Court ordered both parents to New Ways for Families program.
 Each completed 6 Individual sessions
 Each parent attended separate 3 Parent-Child Sessions with daughter.
 In mother's first parent-child session, she was able to encourage daughter to re-engage with father.
 In father's parent-child sessions daughter angrily confronted father with long list of complaints – father was able to listen and manage his emotions and thank her for her feedback.
 Father and daughter now have dinner together once a week.
 Progress, not perfection – but a relationship.

new ways FOR families

Materials

- Professional Guidebook: Explains process and basis for New Ways program
- Parent Workbooks: Structures Parent Counseling with lessons that both parents learn. Structures Parent-Child Counseling sessions. Court and all professionals know what is being addressed.
- Online Co-Parenting Course: 4 – 12 sessions
- Intro DVD (1 hr): For professionals, but can also motivate parents. Free viewing on website:
www.NewWays4Families.com

Summary of Alienation

- A symptom of high-conflict families; not normal issue
- Often one or more adults with personality disorders (All-or-nothing thinking, unmanaged emotions and extreme behaviors become ordinary and contagious)
- Mild to Moderate cases: Family counseling; must involve both parents and children – a family systems approach for a family systems problem
- Severe cases: Do evaluations; consider abuse or estrangement; watch out for confirmatory bias; change of custody some cases
- Focus on prevention: avoid all-or-nothing solutions; safety first – but generally avoid no-contact orders - use supervision if abuse concerns
- Teach parents and children **skills for resilience**: *flexible thinking, managed emotions, moderate behaviors and checking yourself.*

Is Your Child Alienated?

By Bill Eddy, LCSW, ESQ.

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IS YOUR CHILD REJECTING ONE PARENT? In divorce or separation, 10% - 15% of children express strong resistance to spending time with one of their parents – and this may be increasing in our society. It may be the father or mother. It may be the parent the child “visits,” or the parent where the child lives. Is this the result of abuse by the “rejected” parent? Or is this the result of alienation by the “favored” parent? The idea that one parent can alienate a child against the other has been a big controversy in family courts over the past 20 years, with the conclusion that there are many possible causes for this resistance. Most courts take reports of alienation very seriously and want to know if this is the result of abuse or alienating behavior. Resistance to spending time with a parent is always a serious problem. This needs to be investigated, fully understood, and treated with counseling in many cases. Otherwise, the child’s future relationships may be much more difficult.

IS THIS THE RESULT OF ABUSE? The first concern of the courts is protecting the children. If there are reports of child abuse as the cause of the child’s alienated behavior, the judge may make a protective order restraining contact with the “rejected” parent, such as a temporary order for supervised visitation. If you are the “rejected” parent you may feel that supervised visitation is unnecessary or insulting. Yet this may be your biggest help, as someone neutral can observe the child’s behavior and your relationship. Often the judge will say that he or she will not make any assumptions and wants more information before understanding the cause.

IS THIS THE RESULT OF “PARENTAL ALIENATION SYNDROME?” It is important to know that the courts across the country have not adopted the idea that there is such a syndrome. A syndrome requires a generally accepted cause and effect, and there are many possible causes of children’s alienated behavior (abuse by a parent, alienating behavior by a parent, lack of emotional boundaries by a “rejected” parent, lack of emotional boundaries by a “favored” parent, developmental stage, outside influences, etc.). Also, despite alienating behavior by some parents, many children are not resistant to spending time with the other parent. So it is not accepted as a syndrome. However, the courts generally recognize that some children are alienated – they just don’t know the reason automatically and often want more information.

WHAT ARE THE SIGNS OF AN ALIENATED CHILD? Children who are not abused, but are alienated have emotionally intense feelings but vague or minor reasons for them. A child might say: “I won’t go to see my father!” Yet she might struggle to find a reason: “He doesn’t help me with my homework.” Or: “He dresses sloppy.” Or: “He just makes me angry all the time.” Another child might say: “I hate my mother!” Yet again the reasons are vague or superficial: “She’s too controlling.” “She doesn’t understand me like my dad.” These children complain that they are afraid of the other parent, yet their behavior shows just the opposite – they feel confident in blaming or rejecting that parent without any fear or remorse. Some of them speak negatively of the “rejected” parent to others, then relax when they are with the “rejected” parent. Others run away, rather than spend time with the rejected parent. All of these behaviors are generally different from those of truly abused children, who are often extra careful not to offend an abusive parent, are often hesitant to disclose abuse and often recant even though it’s true.

WHY DO ALIENATED CHILDREN FEEL SO STRONGLY? Alienated children generally show intensely negative emotions and an absence of ambivalence. New research on the brain suggests that this may be the result of the unconscious and nonverbal transfer of negative emotions from parent to child. The parent’s intense angry outbursts (even if they are rare), intense sadness, and intensely negative statements about the other parent may be absorbed unconsciously by the child’s brain, without the child even realizing it. The child then develops intensely negative emotions toward the other parent (or anyone the upset parent dislikes), but doesn’t consciously know why. This may explain the vague or minor reasons given by alienated children for intensely rejecting a good parent. This spilling over of negative emotions from upset parent to child may have begun years before the divorce, so that the child is very tuned in to the upset parent, and automatically and instantly absorbs their emotions and point of view.

DOES CUSTODY MAKE A DIFFERENCE? If one parent has almost all of the parenting time, then the child will not have his or her own experiences with the other parent to know that he or she is not bad. Most states expect children to have substantial time with both parents – except in cases of abuse. Ironically, the amount of time is generally not the biggest factor. The biggest factor is if one parent is constantly spilling over intensely negative emotions to the child about the other parent, while the other parent is following court orders and not addressing these issues at all. For this reason, children can become alienated against either a non-custodial parent or a custodial parent. This can be either the father or the mother. It’s like a bad political campaign, with one side campaigning hard and the other side not campaigning at all.

HOW CAN YOU PREVENT ALIENATION? You might be alienating your child against the other parent or against yourself, without even being conscious of it - especially during a divorce. Here are seven suggestions:

1. **POSITIVE COMMENTS:** Regularly point out positive qualities of the other parent to your child.
2. **REPAIRING COMMENTS:** All parents make negative comments about the other parent at times. If you realize you made such a comment, follow up with a “repairing comment”: “I just spoke negatively about your father [or mother]. I don’t really mean to be so negative. He has many positive qualities and I really value your relationship with him. I’m just upset and my feelings are my responsibility, not his and not yours.”
3. **AVOID REINFORCING NEGATIVE COMMENTS:** Healthy children say all kinds of things, positive and negative, about their parents – even about abusive parents. If there is abuse, have it investigated by professionals. If not, be careful that you are not paying undue attention to their negative comments and ignoring their positive comments.
4. **TEACH PROBLEM-SOLVING STRATEGIES:** If your child complains about the other parent’s behavior, unless it is abusive, suggest strategies for coping: “Honey, tell your father something nice before you ask for something difficult.” “Show your mother the project you did again, she might have been busy the first time.” “If he/she is upset, maybe you can just go to your room and try not to listen and draw a picture instead.”
5. **AVOID EXCESSIVE INTIMACY:** Children naturally become more independent and self-aware as they grow up. Be careful not to be excessively intimate with your child for the child’s age, as this may create an unhealthy dependency on you. Examples include having the child regularly sleep with you in your bed beyond infancy; sharing adult information and decisions (such as about the divorce); and excessive sadness at exchanges or how you miss the child when he or she is at the other parent’s house.
6. **AVOID EXCESSIVE COMPARISONS:** When you emphasize a skill or characteristic that you have, don’t place it in comparison to weaknesses of the other parent. You each have different skills and qualities that are important to your child. By comparing yourself positively and the other parent negatively (even if this feels innocent), you can inadvertently influence your child. Remember that your child is a combination of both of you, and thinking negatively of one parent means the child may think negatively about half of himself or herself.
7. **GET SUPPORT OR COUNSELING FOR YOURSELF:** It is impossible to go through a divorce without getting upset some of the time. Protect your child from as much as possible by sharing your upset feelings with adult friends and family, away from your child. Get counseling to cope with the stress you are under.

WILL THE COURT ADDRESS THIS ISSUE? Routinely, in a divorce or separation, the court will order that neither parent shall make disparaging remarks about the other parent within hearing of the child. Some courts may ask you for 3 positive comments about the other parent or 3 steps you are taking to protect the child from absorbing your negative emotions toward the other parent. Think about this seriously, so that you are prepared to answer this question if it is raised. Most of all, practice the suggestions described above.

High Conflict Institute provides training and consultations regarding High Conflict People (HCPs) to professionals dealing with legal, workplace, educational, and healthcare disputes. Bill Eddy is the President of High Conflict Institute and the author of “It’s All Your Fault!” He is an attorney, mediator, and therapist. Bill has presented seminars to attorneys, judges, mediators, ombudspersons, human resource professionals, employee assistance professionals, managers, and administrators in 25 states, several provinces in Canada, France, and Australia. For more information about High Conflict Institute, our seminars and consultations, or Bill Eddy and his books go to: www.HighConflictInstitute.com or call 619-221-9108.

FAMILY LAW

news



Issue 4, 2013
Volume 35, No. 4

MESSAGE FROM THE CHAIR

Andrew Cain

MESSAGE FROM THE EDITOR

Naghmeh Bashar, Executive Editor

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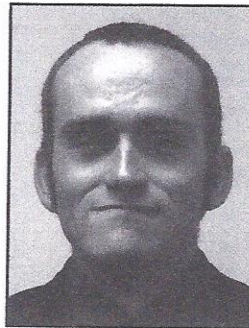
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In preparing to write this message, I harkened back to my time as the editor of the *Family Law News*. Two things immediately jumped to mind. The first is that my time as the editor, while productive and, hopefully, useful to our membership, pales in comparison to the work Naghmeh has done since taking the editorial reigns from me last year. The emphasis she has placed on re-inventing the journal, both with invigorating content and incorporating format change, has allowed the *Family Law News* to continue as one of the premier journals offered by the State Bar. I am so pleased to have Naghmeh back for a second year at the helm of this publication and look forward to many new and exciting developments.



Also, at the forefront of my mind are the words I chose in my inaugural *Message*

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The older I get and the more people I observe from around the world, the more I discover how so many of us, myself included, know so little about effective communication. Effective communication can build great relationships, just as ineffective communication breaks down the tightest of them. While I watch youth and adults communicate, whether in the work place or in their personal relationships, I am amazed we are not required to take more communication courses throughout our schooling.



The youth are taught sex education in school, yet there is no requirement for courses related to effective communication - at least none was offered when I attended school. Many take speech classes to learn how to speak to an audience, but with the exception

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Family Law News

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In conclusion, your ability to communicate is an important tool in the pursuit of your goals, whether it is with your family, your co-workers or your clients and customers.

With respect to feedback, I have requested our readers to get involved and provide their feedback to myself and/or our authors who work so hard. You have seen some of the feedback in our previous issues, as well as some of the interactive communication between the authors and readers with respect to further questions the articles presented; here too, you will see an extensive exchange of questions and answers from our previous author, Abbas Hadjian, and attorney Candice Madanipour regarding his article titled *The Children of Shari'a*.

However, this issue will have far less feedback, as very few of you took the time to communicate with our authors. I truly encourage you to do so. As provided above, to measure our effectiveness with these family law newsletters, we too hope to hear from each of you. The feedback is also a means to inspire further writing and exchange of great ideas. I only request that your feedback be of a conversational tone and not a confrontational one - a constructive analysis of the works and awards presented and not personal attacks.

In This Issue

In this issue, we provide you first with an inspirational article featuring our 2013 FLEXCOM Judicial Officer of the Year Award recipient, The Honorable Judge James M. Mize of Sacramento Superior Court for his years of service to family law as a practitioner and a judicial officer.

Next, is an educational piece written by some of our top nationally recognized legal and forensic minds titled *Hiring Family Law Forensic Psychological Experts - How to Maximize the Results, Minimize the Costs*, authored by Patricia C. Kuendig, Jonathan Gould, Ph.D., and Roger J. Dodd. We also provide a thought provoking and informative piece from the Honorable Judge Mark Juhas, Seth Davidson and Janine Liebert titled *Unbundling Legal Services - Perspective from the Bench and a Solo Practitioner - Unbundling Assist Clients*.

Family Law News has gone interactive once again, as Bill Eddy, our returning author provides a comprehensive and educational article titled *Skills Before Decisions - Can Difficult Clients Learn Decision Making Skill* in response to The Honorable Judge Jaime R. Román's article in the FLN Issue 1, 2013! Be inspired and take action to make Family Law practice better!

Get provoked by Brian Kramer's article titled *Dealing with the fallout from In re Marriage of Facter*. One of our Editors,

John Hodson, stated in reviewing this article, "one of the most interesting, and thought provoking articles." Is anyone challenged to provide responsive commentary and even perhaps an article with a countervailing point of view? I'm waiting to hear from you!

Kate Reder and Dr. Bill Austin have taken the time to interview many evaluators and bring you the educational and insightful piece titled *Solomon's Choice: Evaluators Discuss Relocation in Cases of Joint Custody and Equal Timeshare*.

Be inspired by articles written about and on behalf of our additional 2013 award recipients: Garrett Daily for his well-deserved 2013 State Bar of California Lifetime Achievement Award, Peter Ontiveros for receiving the Court Staff Award and Linda Daeley for receiving the FLEXCOM Staff award, authored by Mark Ressa, Christopher Melcher and Andrew Cain, respectively.

The authors and I are awaiting your thoughtful, constructive, inspiring and educational feedbacks!

Until 2014's issue, enjoy, be provoked, and inspired.

Get the advantage

**Attend the
ACFLS Spring
Seminar!**

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SKILLS BEFORE DECISIONS CAN DIFFICULT CLIENTS LEARN DECISION-MAKING SKILLS?

Bill Eddy

This article proposes some solutions to recent concerns raised by family lawyers and judges, including the Honorable Jaime R. Román in his recent article in the *Family Law News* (Volume 35, Issue 1). How do we protect the children from their parents' high-conflict behavior in separation and divorce? How do we create a shift from their negative engagement with decision-making to a positive engagement that helps parents help their children, rather than harming them - perhaps for life? I believe the answer lies in a significant paradigm shift I call *skills before decisions*.

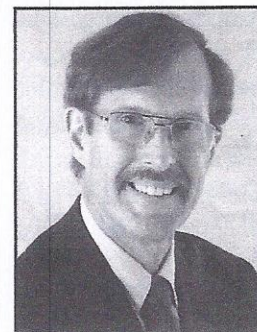
The methods I describe here were used in the San Diego Family Court from 2009-2011 without funding or the ability to study it, but almost all of approximately 30 cases settled out of court. In 2011, I shifted focus to two jurisdictions in Alberta, Canada; each received \$500,000 grants to implement and study this approach for three years. Preliminary results after the first two years have been very encouraging, and we expect to publish full results in a year or so. See the partial, preliminary results in Exhibit A: Social Return on Investment (SROI) Case Study. The full summary is available at www.NewWays4Families.com.

Litigants Have Changed

Litigants were different when I became a family law attorney in 1993. Justice Donald King's latest appellate court decisions were setting spousal support and other family law precedents. The legislature had finalized the child support guidelines - although I remember doing them by hand! Community property division and separate property claims had been mostly settled in the 1980s. The vast majority of divorcing parties were represented by counsel and litigation was mostly about legal research, writing and oral argument - the skills we learned in law school. Litigants came to family court for decisions and then, for the most part, followed those decisions.

Nowadays, with over 40 years of no-fault divorce laws, many divorcing parties never go to court. They make their decisions themselves or with the assistance of negotiating lawyers, divorce mediators, collaborative teams, or family law facilitators. Today's litigants in family court represent themselves and are generally viewed as "difficult" - whether they're represented or not - arguing unnecessarily over their

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children, engaged in domestic violence, child abuse, child alienation, false allegations of abuse or alienation, hiding money, hiding children, and so forth.

In other words, the "legal issue" is no longer the issue. Their behavior is the issue. When the court makes a decision, one or both of the parties often does not accept the decision - they do not follow the decision and no change occurs in their dysfunctional behavior as parents. Thus, they return to court over and over again to argue for more decisions, to appeal decisions, to enforce decisions, or to punish the other side. In other words, their problem is not a lack of decisions. Their problem is a lack of decision skills, especially under stress.

Understanding Defensive Thinking

In simple terms, difficult parents are stuck in defensive thinking. This keeps them in conflict without resolution, which is why they are often called "high-conflict" parents. Neuroscientists have identified the amygdala in the right hemisphere of the brain as the trigger for much of our defensive behavior. It shuts down logical thinking and causes us to react quickly with fight, flight or freeze responses. Allan Schore, a psychiatrist, researcher and author at UCLA, tells us that most of the time our left brain is dominant; but in a crisis or totally new situation our right brain dominates, and this is where most of our defensive responses are located, including our intense negative emotions such as fear and anger.¹ In other words, when litigants are emotionally upset they are truly not thinking logically. For survival purposes, defensive thinking is very fast, intense and includes the following:

- All-or-nothing thinking
- Intense emotions
- Extreme behaviors
- Preoccupation with blaming others

If someone was in a life-or-death situation, you could understand how this type of thinking helps them take quick action. After all, slowly analyzing conflicting information, staying calm, using mild behaviors, and reflecting on oneself are not good ways of surviving in a life-or-death crisis. However, separation and divorce are not life-and-death situations. Even though separation and divorce can be very upsetting, many people do not even use the courts to make their decisions. They are able to manage themselves without abusing each other or their children, and without making false allegations or alienating their children. What's different about the difficult or "high-conflict" litigants?

Brain research indicates that some people with personality disorders actually have an enlarged amygdala and a smaller corpus callosum, the "bridge" of neurons between the right and left hemisphere that help them work together. This combination seems to make it much more difficult for them to calm themselves after they are very upset, so they remain stuck in their right brain defensiveness even when the crisis has passed. This actually makes things worse.² In other words, such people lack the ability to easily move back into left hemisphere problem-solving when they are upset. This helps explain why the smartest appearing people in society, such as doctors, lawyers, and other professionals may become high-conflict litigants despite their strong intellectual skills – they cannot get back in touch with those skills when they are upset. They are stuck in their right brain defensiveness.

Does this mean that high-conflict litigants all have personality disorders, a larger right amygdala, and smaller corpus callosum? I would suggest that many have some traits of these problems; I have written about this extensively in other books.³ However, the solutions I will suggest can be helpful to anyone, regardless of whether they have these problems. Research shows that even those with some personality disorders can outgrow the disorder by learning self-management skills, which may actually strengthen the parts of the brain that were weaker or smaller.

Teaching Upset People Self-Management Skills

Borderline personality disorder is one of the disorders most commonly mentioned in high-conflict family court cases, and I believe it is one of the issues (or at least having some traits of this disorder) for many high-conflict litigants. It is characterized by a preoccupation with fears of abandonment, wide mood swings, sudden and intense anger (often a cause of domestic violence), and the ability to look really good some of the time. One of the treatment methods for changing the behavior of people with this disorder is Dialectical Behavior Therapy. Key aspects of this treatment method include teaching skills for reducing one's

sense of distress, managing relationships more reasonably, and keeping one's moods in a more normal range. This method has been well-researched, but it takes a few years and can cost a fair amount of money to treat.

An alternative that courts and legal professionals can consider is teaching clients, especially parents, the skills for self-management that will help them calm themselves and communicate more effectively and less emotionally to make their own decisions. Ideally, teaching clients these skills would help them to then teach their children the skills. After all, children imitate their parents as their primary way of learning. They also absorb the distress, anger and fear that their parents have when they are preparing for court and after being in court.

Teaching *skills before decisions* would take several paradigm shifts for lawyers and judges, but not for new laws since the basis for counseling and classes is already established in the Family Code (Section 3190). I would suggest the following:

1. Court orders for learning decision skills

High-conflict parents do not seek to change or learn new skills. They have to be ordered to do it. A good example of this is drunk drivers being ordered into treatment. While many resist engaging in the treatment, I worked with many recovering alcoholics and addicts in the 1980s that became committed to recovery after several weeks or months in a court-ordered treatment program. This can work.

The court can anticipate that any case in which parents are fighting over custody of their children will become a "high-conflict" case and consume substantial court time. This is because the vast majority of parents do not fight over their children in divorce. We are talking about the small percentage with at least one parent exhibiting traits of a personality disorder. Reasonable parents simply do not produce alienated children, do not abuse their children and do not abuse each other. An easy bright line for making such court orders might be: *When either parent requests restrictive parenting orders for the other parent, such as no contact, supervised visitation or very limited time (less than 20%) over the objection of the other parent.*

2. At the start of the case

It is very common for family courts to order counseling for one or both parents and the children, but usually this occurs at the end of the case or months into the case. This

generally fails, as there is no accountability if the parent does not attend (because the case is over). Usually, high-conflict parents are so defensive about the court's decisions they often refuse to go to counseling – especially if they are the parent who has been found to be the one needing therapy.

By learning self-management skills at the start of the case, they can be less involving of their children in their case and more likely to be effective at making small decisions without the court's involvement. This also engages them in a positive activity related to their decision-making, rather than focusing on the usual negative engagement of gathering declarations and witnesses against the other party.

Such skills will also help them make their own decisions before the court does, so that many cases can stay out of court that would otherwise tie up the court's calendar. They can learn such skills while waiting for hearings that are scheduled many months away. Such an approach also gives some counseling involvement from the start for cases that are seriously out of control or where it cannot be clearly determined whether it presents a danger to one of the parties or the child/ren.

3. For both parties/parents

Under Family Code section 3190, the court can order either or both parents and the minor child/ren into counseling for up to a year. Teaching decision skills to high-conflict parents is most effective when they are engaged in practicing the skills with another person. Counselors are ideal people for this, as they can help the parent process their resistance to learning the skills and their resistance to shifting their focus away from blaming the other parent. Counselors are trained in dealing with resistance and counselors can be trained in focusing on decision skills.

At the start of a case it is often very hard to know which scenario the court is dealing with:

- a) The parent asking for restrictive orders is accurately describing a serious problem;
- b) The parent asking for restrictive orders has a serious problem; or
- c) Both parents have serious problems.

By ordering both parents to learn decision skills, neither parent is automatically in a defensive mode and both parents learn the same skills - skills that will help them and their children.

4. Use of a Workbook

Decision skills can be broken down into several parts, especially as they relate to the problems of high-conflict parents: *flexible thinking* (such as learning to make reasonable proposals), *managed emotions* (such as methods of calming themselves with encouraging statements), and *moderate behaviors* (such as communicating by emails that are brief, informative, friendly and firm). Using a standard workbook to learn and practice these skills further eliminates the parenting contest, as both parents will learn the same skills at the same time and be better able to teach these skills to their children using written exercises. Also, writing in a workbook helps our brains absorb material much more strongly than just thinking about it or talking about it. Writing also reinforces use of the left-brain, which helps people who are stuck in their right brain defensiveness to get into problem-solving.

5. For a short length of time

Ordering both parents to learn decision skills with a workbook does not have to take a long period of time. If each parent has an individual counselor for a few weeks, then meets with the children a few times, this can all occur within 2-3 months. This is often how long parents have to wait these days anyway for hearings on parenting matters, and they just might reach their own decisions and no longer need to use the court date. Teaching such skills could also occur in a shorter, group format such as in a class. While this loses the benefits of individual counseling, it can make it more affordable. This would not take the place of a parenting class, but could be inserted at any time in the process, or even be done before a parenting class.

6. Required Paradigm Shifts

The most effective way of teaching these skills would require several paradigm shifts for lawyers, judges and family courts. It would also require an interdisciplinary approach, with the collaboration of all professionals involved with the family, including judges, lawyers, counselors and mediators. With this involvement, all professionals can remind the parents to use their new skills during times of decision-making. Otherwise, parents may revert back to defensive thinking. I suggest the following paradigm shifts.

7. Focus on decision skills, rather than parenting skills

This approach shifts the focus to teaching the specific skills that parents need to make their own decisions. By teaching them positive engagement in their own decisions, they are more likely to follow their own decisions and make the small

decisions that are required to implement any co-parenting plan.

8. Provide positive encouragement, rather than criticism

High-conflict parents simply cannot handle criticism – especially public criticism. This may seem surprising, given how obnoxious or aggressive they are. However, it is a one-way street for people with personality disorders or traits. They may criticize all the time, but they cannot tolerate being criticized. While legal professionals are used to disagreeing and criticizing each other in public debates, the average person is not used to this, and parents with possible personality disorders or traits really cannot cope with this. (Ironically, the only people willing to drag their parenting matters into court these days are those who are the least able to handle the adversarial court process.)

9. Realize that insight doesn't work for these clients

High-conflict clients lack insight into their own behaviors, probably because they are stuck in their defensive thinking. Trying to argue with their logic or give them insight into their own behavior just makes them more defensive. Forgetaboutit! They need skills, which is something they can learn, rather than insight into their own past behavior. They need to focus on the future as much as possible, and learning skills is one effective way to do it.

10. Benefits to Family Lawyers

While this method emphasizes short-term counseling, the role of attorneys in reinforcing the parties' use of skills in the decision-making process is essential. Otherwise, the parties do not connect their skills to their work with their lawyers. In addition, lawyers can manage these clients more easily by requiring them to manage their emotions, make proposals, and write more reasonable emails and declarations. For example, when a client raises a problem or anger at the attorney, he or she can say: "Then what do you propose?" Lawyers also can emphasize the use of these skills with clients in preparing for negotiation or mediation sessions, in terms of specific and detailed proposals; but also in terms of managing their emotions and negotiating behavior in front of the other party and counsel.

Conclusion

High-conflict parents are difficult because they lack insight into their own problems. They are preoccupied with blaming others and do not change. These are characteristics of personality disorders, but they may just have some traits. In

any case, while they may have a narrower range of behavior, they still have a range. We can bring out the best in them or the worst, depending upon whether we trigger their defensiveness or sincerely make efforts to help them learn enough skills, step-by-step, to make their own reasonable proposals and separation and/or divorce decisions.

The social environment matters to these parents. If we provide enough of the right kind of structure for them to learn skills, then we may actually help calm them down, make their decisions and help their children while they move on. Of course, some cases will always end up in court, but we can reduce their numbers substantially, I believe, by shifting the emphasis from making decisions *for* parents to teaching them to make their own decisions, using the approach I have described above.⁴

California Family Code Section 3190. Order requiring counseling

(a) The court may require parents or any other party involved in a custody or visitation dispute, and the minor child, to participate in outpatient counseling with a licensed mental health professional, or through other community programs and services that provide appropriate counseling, including, but not limited to, mental health or substance abuse services, for not more than one year, provided that the program selected has counseling available for the designated period of time, if the court finds both of the following:

- (1) The dispute between the parents, between the parent or parents and the child, between the parent or parents and another party seeking custody or visitation rights with the child, or between a party seeking custody or visitation rights and the child, poses a substantial danger to the best interest of the child.
- (2) The counseling is in the best interest of the child.

Endnotes

- 1 Schore, A. N. (2003) *Affect Regulation and the Repair of the Self*. New York, NY: W. W. Norton & Company
- 2 Teicher, M. H. (2002) Scars That Won't Heal: The Neurobiology of Child Abuse. *Scientific American*, 286 (3), 68-75
- 3 Eddy, B. (2006). *High Conflict People in Legal Disputes*. Scottsdale, AZ: HCI Press
- 4 Eddy, B. and Kreger, R. (2011). *Splitting: Protecting Yourself While Divorcing Someone with Borderline or Narcissistic Personality Disorder*. Oakland, CA: New Harbinger Press.

Exhibit A



Social Return On Investment (SROI) Case Study:
**Medicine Hat Family Services
 New Ways For Families (NWFF)**

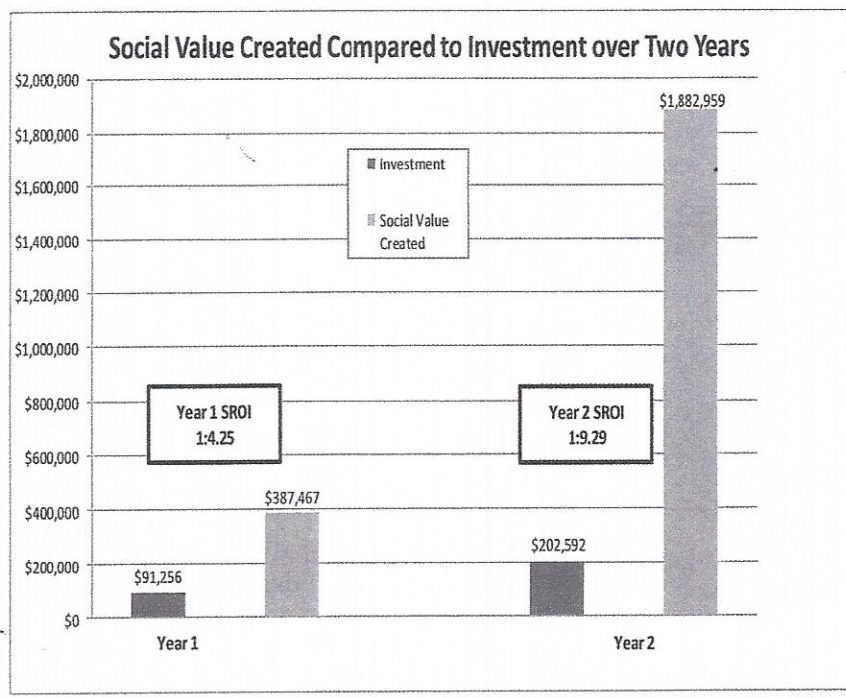
Social Value Created & Valuing Change—SROI

Social Return on Investment (SROI) analysis was used to capture the social value of the outcomes produced by investment in the NWFF program. Through SROI analysis, the outcomes of the program were carefully mapped enabling a clear understanding of the links between program activities and the social *change* resulting from these activities. The analysis looks at the outcomes for 47 completed cases and 94 participants (not including children). In order to determine the total present social value created, outcomes were assigned financial proxy values to represent the social value associated with changes experienced by participants as a result of the program. These proxies included justice costs like court, police time, legal costs to both the system and the participant, mental health services, as well as costs related directly to the children such as Child Welfare interventions and personal impacts of stress and abuse.

"The information I got out of it (NWFF) was priceless"
 NWFF Participant

The Value of Annual Investment

The Social Return on Investment (SROI) analysis of the NWFF program found that for every dollar invested the program created \$4.51 in social value in the first year of operation, and \$9.86 of value in the second year for an average of **\$7.18** of social value created for every dollar of investment. Throughout the analysis, conservative estimations of social value were taken, and each proxy was considered in terms of the amount of the change actually attributable to the program (and discounted for that change determined not to be a direct result of the NWFF). Since not all social value can be adequately captured in financial terms, the values presented above represent the *minimum* value created through the program, and the actual value is likely higher.



Looking Forward

These results indicate that there is significant value in using the skills based NWFF intervention to help parents improve communication and cooperation in addressing parenting disputes in order to keep these cases out of the court system where possible. By supporting these parents through the difficult process of establishing appropriate and fair parenting agreements, NWFF helps to decrease conflict, stress and abuse while improving outcomes for children, leading to safer, healthier families and communities. The NWFF program should be continued and expanded to other communities.

Recipient of Funding from Alberta Justice and Attorney General



FAST FACTS

Participant risk factors:

- Two thirds of clients said their relationship was abusive
- In 40% of cases police had been called to the house and 19% had restraining orders
- Approximately half of clients returned to court at least 3 times prior to NWFF
- 89% of clients said parenting discussions led to arguments with their ex partner
- 90% of parents felt the children were negatively affected by parenting disputes

NWFF Results

- **Total 99 cases referred**
- **62 cases completed NWFF**
- **33 cases resolved outside of court**

SROI Ratio:

Year 1: 4.25 : 1

Year 2: 9.37 : 1

Year 3: 6.68 : 1

Average return over three years
7.40 : 1

Contact Information

Medicine Hat Family Services
477-3 St. S.E. Medicine Hat, AB.
Phone: (403) 504-8026

"We would not have got near as far in reaching agreement without the program" NWFF Participant

Program Background

New Ways for Families (NWFF) is a three year pilot project funded through Alberta Justice and Attorney General offices and implemented by Medicine Hat Family Services. NWFF provides short term counselling for high conflict separating or divorcing parents who have ongoing custody and access disputes. The goal is to reduce potential escalation, assault or re-victimization in high conflict custody and access cases and to increase parent's cooperative parenting skills in order to ensure the children's best interests are addressed and harmful effects on children are prevented. In NWFF both parents are encouraged to avoid the cycles of ongoing parenting assessment and additional court applications, and instead focus on making positive changes during individual counselling sessions. NWFF focuses on three fundamental problem solving skills for parents: flexible thinking; managed emotions and moderate behaviours. The program encourages system coordination among justice, legal and social service practitioners, and reduces use of justice and court systems for resolving custody issues.

Participant Outcomes

Over the first 3 years of the program, NWFF completed **62** cases with an overall success rate of 53%. Of the cases completed, 17 resolved within the program and did not require further legal decision-making processes. A further 2 cases were resolved through Collaborative Law; following completion of the NWFF program, 12 cases resolved through JDR processes, 1 case resolved after mediation and in 1 case the parties reconciled.

Theory of Change

If separating or divorcing couples battling over child-custody and access, receive skill-building counselling that results in respectful communication, they are more likely to negotiate the best outcome for their children and to effectively co-parent into the future.

Program outcomes show that 42% of clients improved their parenting cooperation in areas such as willingness to accommodate changes in visiting arrangements, to act as a resource to the former spouse in raising the children, and improved day to day decision making about the children. 50% of parents noted improved cooperation on major decisions about the children. In 68% of cases, parents increased or maintained their involvement with the children. Outcomes for children included less acting out behaviours (50%); less symptoms of stress such as headaches, stomachaches; difficulty sleeping (35%); improved school performance (33%); and more interest in seeing the non-custodial parent (38%).

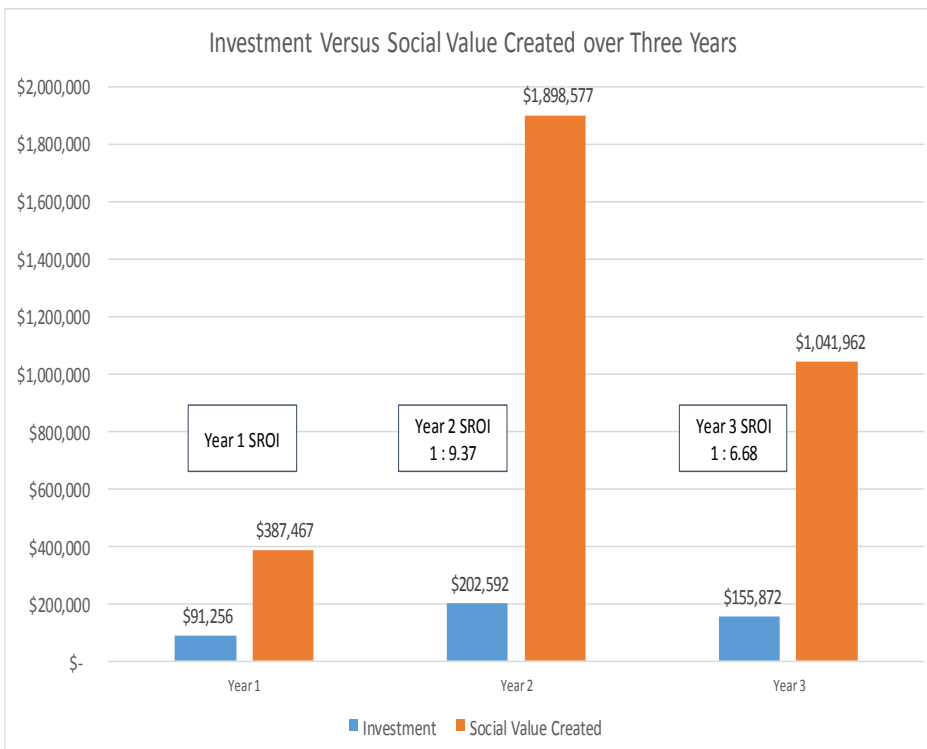
Social Value Created & Valuing Change—SROI

Social Return on Investment (SROI) analysis was used to capture the social value of the outcomes produced by investment in the NWFF program. Through SROI analysis, the outcomes of the program were carefully mapped enabling a clear understanding of the links between program activities and the social *change* resulting from these activities. The analysis looks at the outcomes for 62 completed cases and 124 participants (not including children). In order to determine the total present social value created, outcomes were assigned financial proxy values to represent the social value associated with changes experienced by participants as a result of the program. These proxies included justice costs like court, police time, legal costs to both the system and the participant, mental health services, as well as costs related directly to the children such as Child Welfare interventions and personal impacts of stress and abuse.

“The information I got out of it (NWFF) was priceless”
 NWFF Participant

The Value of Annual Investment

The Social Return on Investment (SROI) analysis of the NWFF program found that for every dollar invested the program created an **average of \$7.40 in social value** over the first three years of operation for every dollar of investment. Throughout the analysis, conservative estimations of social value were taken, and each proxy was considered in terms of the amount of the change actually attributable to the program (and discounted for that change determined not to be a direct result of the NWFF). Since not all social value can be adequately captured in financial terms, the values presented above represent the *minimum* value created through the program, and the actual value is likely higher.



Looking Forward

These results indicate that there is significant value in using the skills based NWFF intervention to help parents improve communication and cooperation in addressing custody/access disputes in order to keep these cases out of the court system where possible. By supporting these parents through the difficult process of establishing appropriate and fair custody/access agreements, NWFF helps to decrease conflict, stress and abuse while improving outcomes for children, leading to safer, healthier families and communities. The NWFF program should be continued and expanded to other communities.