

Proving Your Case in Court, in Therapy, to Assessors and to Child Protection Authorities



LUDMERLAW

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WHAT HAVE WE LEARNED IN 34 YEARS SINCE THE 1991 DECISION IN MONTREAL HEARD BY THE LATE JUSTICE GOMERY

***PSM v. AJLC*, Judgment of the Superior Court of Quebec, Case No. 500-12184613-895**

Summary of *PSM v. AJLC*, 1991 Judgment of the Superior Court of Quebec, Case No. 500-12184613-895

1. Four children
2. Dr. Abe Worenklein (former PASG Board member testified about the state of knowledge)
3. Failed conventional therapy
4. One-sided psychological assessment
5. Protective separation Ordered for the two younger children
6. The case was upheld on a partial appeal a year later
7. Of interest to those who have been involved in this work for quite some time, is the fact that (PSM) the mother, Pamela Stuart Mills, moved to Texas where Pamela, and her new husband Robert Hoch, started a charitable foundation to help families in crisis. The Foundation, in the early 2000's, established The Rachel House, one of the first and most prominent residential reconciliation intervention programs. Reconciliation services, going far beyond the formal residential program, extended for many years, with assistance to many families, legal and mental health professionals and other organizations and agencies.
8. Pamela and Robert gave a paper at the 2002 Conference in Frankfurt on Main Germany that was organized by PASG member Wilfrid von Boch-Galhau I referred to Wednesday evening at the reception honouring our Founders

Recognition That Complete Rejection of a Parent is Rare

Some of the early insight from this case was only empirically validated by other PASG members decades later, such as the statement by a social worker quoted in the Judgement as follows:

“The complete and total rejection of a parent is almost never seen, even in cases where that rejected parent has abandoned or abused a child”.

Recognition that Parental Alienation is Child Abuse and Requires a Child Protection Response

The recognition of the dangers to the future mental health of alienated children, years prior to the well-quoted peer-reviewed work of various PASG members, is stated in the Judgment as follows:

“[all four children] have chosen to renounce and suppress their natural feelings for the mother they love, or loved until the marriage broke down, and to identify themselves totally with the hatred for her, which animates their father. The Court cannot remain indifferent to the danger to their future emotional stability this behaviour represents”.

Recognition of the Dangers of a One-Sided Assessment/Individual Therapy

The dangers of a “one-sided assessment”, a common tactic of alienators who unilaterally take the children to see a therapist who will have no input from the other parent, was recognized as follows:

“The Court has the impression that Dr. Lefevre allowed herself to be used by the Defendant. A Psychological Assessment which does not attempt to include the point of view of one of the parents is of limited value, and no explanation is attempted as to why the children were so openly hostile to their mother, for whom they had had great affection until only a short time before”.

See also: *“Is the Child’s Therapist part of the Problem”*, 2002 FCR

See also: College of Psychologists discipline 2019 ONCPD 1; 2018 ONCFP 1 and 2017 ONCPD 1

The Alienated Child and “Whack-A-Mole”

“The rejected parent is in a situation where he or she cannot do anything which is not perceived by the child as being bad or wicked. Even the most innocent remark or gesture is used by the child as evidence justifying the child's alienation”.

How to deal with narratives

Avoid apologies for exaggerated or untrue allegations

Avoid “child-led” processes

Avoid “trauma-informed” interventions until the alleged “trauma” is verified

Avoid silos

Lack of Empathy as a Diagnostic

The absence of empathy [both a key diagnostic criterion and an essential target of reconciliation therapy] is demonstrated by Justice Gomery writing: *“the children have seen their mother weeping on many occasions, and they unanimously conclude that she is faking and that that is a demonstration of her lack of sincerity. They do not seem to be able to comprehend that their contemptuous rejection of her causes her genuine grief”*.

Empathy is a developmental task of childhood

Lack of empathy is a diagnostic long accepted in many “models” used to assess PA dynamics

The Failure of Conventional Therapeutic Interventions

The failure of conventional therapeutic interventions was also recognized by the Court: *“Mrs. Greenberg testified about the failure of her attempts at therapy, a failure which she attributes to the systematic obstruction of her efforts by the Defendant”*.

WHAT IS SYSTEMIC FAMILY THERAPY AND HOW DOES IT DIFFER FROM INDIVIDUAL THERAPY

- A good introduction is this piece in Psychology Today (<https://www.psychologytoday.com/ca/therapy-types/marriage-and-family-therapy>)
- The practice of systemic family therapy is a specialist endeavour and standards are published by individual organizations, such as the American Association for Marriage and Family Therapy (<https://www.aamft.org/>) and U.S. state regulator issuers of the LMFT designation
- The Canadian Association for Couple and Family Therapy (<https://camft.ca/>) issues the RMFT designation
- There is also the Ontario Association of Marriage and Family Therapy (<https://oamft.com>)
- Provincial regulation applies to titles and some related activities through, for example, the College of Registered Psychotherapists (Ontario)

STANDARDS OF PRACTICE AND REFERENCE MATERIALS

[Family Therapy Reference Materials Titles & Indices updated September 11, 2025](#)

[Shelley Polak PhD Thesis](#)

[Current status of outpatient therapy - Polak and Moran 2016](#)

[AFCC Guidelines for Court Involved Therapy](#)

LEGAL ISSUES PERTAINING TO COURT-ORDERED FAMILY THERAPY

[These Teens Got Therapy. Then They Got Worse. - The Atlantic](#)

[Miller Presentation re Tx of PA London 2018 2 MB](#)

[LUDMERLAW Standard Therapy and Parenting Covenants Precedent August 2021](#)

[Is the Child's Therapist Part of the Problem_ 2002 FCR Greenberg and Gould](#)

[Form 00 -Statement of Law Respondent Failed Therapy December 23 2022.docx](#)

[EAPAP Statement on General Therapy](#)

[2022 The Forgotten Lessons of the Recovered Memory Movement](#)

LEGAL ISSUES FOR COURT ORDERS RELATED TO THERAPY

See Statement of Law available at the following link:

[Memo - short version - therapy for alienation and older children 2023-03-13 FINAL.docx](#)

WEIGHT GIVEN TO CHILDREN'S VIEWS AND PREFERENCES

The Decision recognized the necessity to take children's views and preferences in context where it appears they are not genuine:

“the desires and preferences of each child are factors to be taken into consideration, particularly in cases where the child's wishes are freely expressed and are not influenced by pressure or manipulation. In this case, the wishes of the children, especially the younger children, may be safely ignored because they are the result of distortions of the truth that their father has told them, and the psychological pressure to which they have been subjected” ... “Children do not always know what is best for them. The law leaves it to the Court to decide this question, when their parents are unable to agree, and the law does not state anywhere that the Court must be guided by what the children have to say, although it does require that they should be given an opportunity to be heard’.

FINDING OF PARENTAL ALIENATION SYNDROME – CIRCA 1991

“This case represents an extreme example of parental alienation syndrome”

Dr. Abe Worenklein testified about Dr. Gardner’s work

Since then, in Canada (with the exception of British Columbia) many models are used consistently by the Courts and expert evidence from an assessor is not required, though possibly advisable.

Expert evidence from a therapist is preferred practically

The current state of the law (note D v T 2021 – Judicial Notice):

[June 2023 Legal Memo – What is Alienation in Reported Cases](#)

ISSUES WITH MODELS OF DEFINITION OF PARENTAL ALIEANTION

1. We need models to contrast with the evidence of the case
2. We need to be able to accept non-case specific expert evidence from other cases
3. However, all models have rigidities, use “labels” that are not self-applying, have illogical exclusion criteria (a finding of even a single instance of situational couple violence?)
4. Steven Pinker in *How the Mind Works* (1997) reminds us that even all of the available rational building blocks towards a conclusion cannot account for the infinite variability of an event or situation and therefor we need inferential and conceptual reasoning tools to foster understanding
5. Some of those “reasoning tools” include: what is the AP and TP doing that is not helpful, what can the AP and TP do that they are not currently doing that would be helpful and who is/is not following the directives of the systemic family therapist and why won’t the family system heal?
6. Some other “reasoning tools” are – who is anchored on narratives that must go away/be resolved and who is/is not prepared to learn from the past but leave the past in the past and focus on a new family constitution with a highly prescriptive set of parameters/boundaries
7. Shouldn’t we start with understanding the emotional/psychological harm that results from the loss of a parent in childhood and work backwards from there?
8. Dr. Amy Baker’s work: cult dynamics, adult children of PA revelations, “Bonded to the Abuser”
9. Ryan Thomas, Madison Welbourne (The Anti-Alienation Project), Erasing Family and other films
10. Particia Kerig – enmeshment and boundary violations

MY PERSONAL FAVOURITE CONCEPTUAL CONSTRUCT OF PA DYNAMICS

[Bors v. Beleuta, 2019 ONSC 7029 \(CanLII\)](#) (cited in many subsequent cases)

[119] Counsel directed me to the Manitoba case of *L.M.A.M. v. C.P.M.* [2011 MBQB 46](#). Dr. Michael Stambrook provided a very comprehensive, and in my view accurate, definition of parental alienation. Justice Thomson quoting from Dr. Stambrook's testimony wrote at paragraph 98:

It is a descriptive term that refers to a process. It is not a diagnostic label. It doesn't appear in any nomenclature about mental health disorders. It is a descriptive term that refers to a process where there is a systematic devaluation, minimization, discreditation of the role of, typically the other parent in a parental dyad. One parent systematically, through a variety of physical, emotional, verbal, contextual, relational set of maneuvers systematically reduces the value, love, commitment, relationship, involvement of the other parent by minimizing, criticizing, devaluing that parent's role. It can involve children having their sense of history being "re-written" by a parent's redefinition of history, reframing things, repetitively talking about things. It can involve sometimes very subtle and sometimes not so subtle suasion, coercion, direction, misrepresentation and so on.

It is an abusive practice. It is child abuse when it occurs. It's emotionally abusive. It cripples and stunts children's development because the reality they knew at one point is undermined by this process. It is dangerous for the development because in [an] ideal situation, children should feel free to love and interact with the adults who are important in their lives, unencumbered by twisted turns of relational loyalties that are, unfortunately misplaced in this situation.

So parental alienation is a process, an interactional process where systematically one parent's role in, for the children is eroded over the course of time.

See Through TP Errors and Avoid the “Hybrid Case” Fallacy

Plaintiff is not a perfect person and has not always acted wisely. She loses her temper at times and may use inappropriate language on those occasions. But nothing that she has said or done could remotely explain or justify the rejection and hostility to which she has been subjected at the hands of her children. She is, if anything, the woman who loves her children more than the average mother. She has never mistreated them. She is not mentally unstable as the children repeatedly suggest; indeed, her persistence and determination in pursuing this action are proof of a remarkable capacity to absorb rejection and humiliation and to continue to function in an optimistic manner”.

PARENTAL ALIENATION REQUIRES A CHILD PROTECTION MODEL

“Defendant has deliberately poisoned the minds of his children against the mother that they formerly loved and needed. In the Court's opinion, a father who would act in this way represents a grave and persistent danger to the mental and emotional health of his children”.

“Hatred is not an emotion that comes naturally to a child. It has to be taught. The person who has taught the children to hate is their father. They would be better off if he were to be removed totally as an influence upon their development until they are able to withstand and reject his negative attitudes”.

THE “FRIENDLY PARENT PRINCIPLE”

Interestingly, Justice Gomery alluded to one of the key criteria that would later be developed in Canadian jurisprudence when determining whether a placement with the targeted parent (and at least a temporary timeout for the favoured parent) can be justified:

“the determining factor, in the Court's opinion, is the simple fact that the Plaintiff is clearly a better and more loving parent than the Defendant. The children have a chance to love both of their parents if they are in the Plaintiff's custody. No such possibility exists if they remain with the Defendant”.

REFLECTIONS ON THE OPENNING PLENARY SESSION IN LIGHT OF PSM CASE

- 1. Never, Never, Never give up (Winston Churchill)**
- 2. Failure is not an option given what lies ahead for children who lose a parent (Apollo 13)**
- 3. Ask a recovered child what was going through their head**
- 4. Spontaneous reunification years later is not a plan – it is merely an aspirational statement**
- 5. It is not acceptable for the system to say “we did the best we could, we don’t know, its hard” when there is no learning built into the system and each case is a matter of educating the judge about things we knew 34 years ago**
- 6. Detailed therapy Orders was solved long ago – I have attached my precedents through OneDrive links – use them**
- 7. Courts/Assessors/Therapists/Parental Coordinators need to study the families they previously dealt with, see how they turned out and what can be learned from their trip through “the system”**
- 8. Models involve “labels”, and “labels are conclusionary statements”. Rules for reasoning need to supplement the rigid criteria of models and the “labels” within models**
- 9. Is there room in the 5-Factor Model for the “Ludmer But-For Test”?**

TOPICS FOR THIS PRESENTATION

- 1. Issues common to all forums in which causality and solutions are debated/argued/assessed/treated**
- 2. How does the Court system deal with intransigent family dysfunction?**
- 3. What are the Tools Available to prove your case?**
- 4. How do you deal with lying and staging and exaggeration and gaslighting?**
- 5. How do you defend against false allegations?**
- 6. Do you have to battle the entire anti-PA world or just the other side and aligned parties in your case?**
- 7. How do you prove a negative?**
- 8. Lessons from 17 years in the trenches**

THE LEGAL FORUM

WHAT IS PARENTAL ALIENATION FROM A LEGAL PERSPECTIVE

- Do you need to prove out a recognized model even in the absence of a universally adopted model?
- Examples from: PASG (the 5-factor model), Dr. Childress (California psychologist), Clawar/Rivlin (Children Held Hostage, 2nd ed.), Karen/Nick Woodall (The Family Separation Clinic and The International Academy of Practice with Alienated Children)
- Do you need a mental health expert or is this just a factual inquiry into causality and homeostasis?
- What about other jurisprudence from around the world?
- Can you rely on an expert giving non-case specific advice in another reported case?
- Is the concept so well accepted now that Courts can take “judicial notice”

WHAT IS PARENTAL ALIENATION FROM A LEGAL PERSPECTIVE

Quote from *Bors v. Beleuta* 2019 ONSC 7029 (canlii.org) at para. 119

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Other Sources of Jurisprudence

- **How to formally argue the case – see factum used on appeal in Bors v. Bors 2021 ONCA 513 (www.canlii.org)**
- **Lessons from Wilson vs. Sinclair 2022 ONSC 2154 (www.canlii.org)**
- **APSAC Guidelines on child maltreatment (www.apsac.org)**
 - Spurning, terrorizing, exploiting/corrupting, emotional unresponsiveness, isolating, mental health, medical and educational neglect
- **Harman, Kruk and Hines 2018 and more recent articles**
- **Identifying Coercive Control Canadian Family Law (Family Court Review Volume 59, 4, October 2021, pages 810 – 827)**
- **Substantial case law recognizing parental alienation conceptually and that it does not require an expert report for diagnosis or for therapy or for protective separation (other than proposed practitioners speaking to their treatment plan/program): Wiggins v. Fiorito, 2015 ONCA 729, Bors v. Bors 2021 ONCA 513, A. M. v. C. H. 2019 ONCA 764, D. v. T., 2019 ONSC 644, affirmed 2021 ONCA 850, D. v. T. 2021 ONSC 2945, D. v. T. B. 2021 ONCA 850**

GATEKEEPING AND ENMESHMENT

- These dynamics lead to child behaviour that looks like “alienation” but is not [they may still express love and only moderate anxiety about the targeted parent] but are completely different dynamics
- Case law has recognized the negative impact of enmeshment dynamics. See, for example, *J.M.G. v. L.D.G.* 2016 ONSC 3042 at paragraph 103 and *W. (J.C.) v W. (J.K.R.)* 2014 BCSC 488 at paragraphs 33 to 34 and *Y.V. v. L.F.T.* 2017 ONSC 4395 at paragraph 154
- Gatekeeping behaviour have also been commented on negatively in jurisprudence. See for example *Y.V. v. L.F.T.*, 2019 ONSC 1718 and *Webster versus Suteu* 2015 ONCJ 538 There is also a substantial body of jurisprudence that a parent who seeks to restrict parenting time bears the burden and the greater the departure from equal parenting the steeper the burden becomes. See, for example, *Oriku v. Ransome* 2021 ONCJ 66o and *Klymenko v. Klymenko*, 2020 ONSC 545
- There is also a substantial body of jurisprudence that a parent who seeks to restrict parenting time bears the burden and the greater the departure from equal parenting the steeper the burden becomes. See, for example, *Oriku v. Ransome* 2021 ONCJ 660 and *Klymenko v. Klymenko*, 2020 ONSC 5451
- The “maximum contact” and “friendly parent” principles remain alive under the revised Federal and Provincial Legislation and are places where these principles can be applied.
- Further research to understand the implications of these “boundary violations” can be found in a collection of papers from a 2005 conference, which remain current “state-of-the-art” See: “Revisiting the Construct of Boundary Dissolution: a multidimensional perspective”, Patricia K. Kerig 2005 *Journal of Emotional Abuse*

WHAT ABOUT NON-CANADIAN LAW?

See “Parental Alienation – Science and Law”, Lorandos and Bernet Editors, Charles C Thomas Publisher, Ltd., Springfield Illinois 2020. This is the successor textbook to the International Handbook of Parental Alienation, First and Second Editions.

See also the three special editions of the Family Court Review (the periodical published by the AFCC in 2000, 2010 and April 2020).

See, in particular, Dr. Lorandos’ article April 2020 Edition surveying US Appellate Court Jurisprudence.

See https://www.bailii.org/form/search_cases.html

CaseText in the US offers reasonable pricing for large datasets

HOW DO YOU PROVE A NEGATIVE



Presentation to PASG 2025 - TORONTO

Brian Ludmer September 12, 2025

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”*; *Boundaries* is *“the race to the bottom of permissive Parenting”*

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

Learn, consult, apply and ask for a corresponding relational move

Be calm in the face of the storm and prove you are the opposite of what is being depicted

How do you “prove a negative”? - 1

Serious accusations of physical, emotional and/or sexual abuse are common in alienation cases due to the need of alienating parents to substantiate the extreme behaviour of the children.

The most abused word in the English language is the word “abuse”.

A system focused on cautious protection of children results in a perception of “guilty until proven innocent”.

Proving a negative where the specifics of allegations are either unknown, vary or are embellished over time, or so amorphous as to be almost incapable of refuting, is a challenge.

Tool #1: Assemble objectively determinable facts and observations from third-parties and the parents’ and children’s behaviour during the period straddling the timeline of the alleged events and showing as many discontinuities as possible.

Tool #2: Look for the illogical or atypical manner in which the allegations arose.

Tool #3: “Recovered memories” of events supposedly having occurred long before. Facts demonstrating a conflict with the science of memory formation and suggestibility. Memory of events degrades over time and is influenced by environment, suggestion and coaching. Memory can be corrupted by multiple questioning over time.

How do you “prove a negative”? - 2

Tool #4: Psychiatric/psychological reports and specialized testing.

Tool #5: Were there requests that an allegation by a favoured parent or child not be shared with the targeted parent – indicia of falsehood.

Tool #6: A child outwardly exhibiting no fear or reservations with being with a parent, yet interviewing otherwise, or attempting to display fear and anxiety in other forums.

Tool #7: Piece together as many specifics of the allegations as possible in the exact wording shared by the alleging parent or child to all of the investigating or other third-parties, and chart them by date, forum, specific language and content, who was present in the interview and what background was given to the interviewer.

Tool #8: Search for all discontinuities. Parents making false allegations will compartmentalize information and not share the full background with each third-party that they sequentially make the allegations to, or whether the particular allegation was already investigated and not verified by another person or authority.

How do you “prove a negative”? - 3

Tool #9: If the alleging parent or an aligned therapist or other is in the room at the time of the child’s interview, the child may feel coerced to satisfy the demands of that person. Alternatively, the parent will maintain control by telling the child that everything will be reported back to them.

Tool #10: Was there any indication of prior discussions, probing or coaching prior to the first professionally trained non-suggestive interview?

Tool #11: Draw diagrams of the scene. The discontinuities will often become clear [floor layouts, placements of people at the time of the incident, potential witnesses at the time of the incident who heard nothing or to whom a child would have instantly reported].

Tool #12: Timing of the alleged events and when these were first reported and to whom. Timing of an allegation in relation to legal steps, third-party reports, and other events.

Tool #13: Inconsistencies amongst various allegations over time (e.g. accelerating/expanding sexual abuse).

Tool #14: Failure to recognize base rate will fall to almost zero once targeted parent faces first false allegation. Thereafter they are hyper-vigilant and least likely to commit further abuse.

Tool #15: Repetition by a child of a story, even if consistent, does not add weight to the credibility or reliability of the assertion.

USING DEMONSTRATIVE EVIDENCE IN REFUTING FALSE ALLEGATIONS

- charts showing evolution of allegations over time in relation to other events in the case (the “Whack-A-Mole” chart)
- schematic design this of scenes at which allegations are alleged to have taken place
- internal inconsistency or evolution of particular allegations over time and as they are transmitted from one person to another;
- charts linking principal theses of the case to communications, proceedings, and events in the case; and
- reports an investigation at various points of the family history that do not reflect which differ from the evolution of allegations over time.
- Hypervigilance argument in response to false allegations (or Tool #16)

Impact of False Allegations

Where allegations of abuse are determined to have been unfounded, the raising of those allegations by the accuser parent are in themselves the ultimate abuse by the parent against the child, for it spoils, or at least shadows, the future relationship that child has with the now proven innocent parent thereafter.

To deny a child the right to love, care and guidance from a parent by the other parent using false allegations is in itself a form of child abuse and raises questions about the fitness of the accusing parent.

Just as a Court cannot countenance the obvious risks of abusive behaviour, it equally cannot countenance the emotional and developmental harm to children associated with encouraging or enabling false accusations of abuse, so as to cause or risk estrangement between children and innocent parents.

JURUSPRUDENCE ON FALSE ALLEGATIONS

- 1. An example of coercive control**
- 2. Child abuse**
- 3. A manifestation of domestic/family violence**
- 4. Can leave lasting damage even if refuted/not verified**
- 5. Goes to fitness to parent**
- 6. Extensive Canadian and other jurisprudence**
- 7. Present in almost all cases – including non-PA or more conventional cases**
- 8. Goes to credibility and reliability issues in assessing the evidence**
- 9. See statement of law precedent**

DISCOUNTING THE EXPRESSED VIEWS OF THE CHILD IN AN ALIENATION CASE

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”.

Who, What, When, Where, Why of Child's Voice

Who - Depends on Age of Child; Age Ranges are historical and don't reflect current Neuroscience

What – Views and preferences; probe rationale for the views and preferences; factual assertions of incidents and relative parenting issues

When – Early enough in the case for contesting evidence

Where – Prior to Court Hearing disclosure of custody assessor and children's lawyer's and child protection authorities' files – sometimes contested

Why – Legislation requires soliciting views and preferences where they can be reliably ascertained; children should feel that they were part of the process (a voice but not a choice)

RHETORIC CONCERNING THE CHILD

The “right of the child”; the “voice of the child”, the “best interests of the child”

UN Convention on the Rights of the Child (1990) Article 12 protects the right of the child to maintain a relationship with his/her parents; not the right of the child to reject a parent

The voice of the child can be put before the Court in a sensitive, age-appropriate way through an assessment or OCL investigation or “open mediation” or through a therapist rather than by appointing counsel and making a child a party to the private custody/access litigation

Many other provisions of the Convention specifically refer to protecting the right to a relationship with both parents

Children's Narrative

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

THE BATTLE AGAINST THE NARRATIVE

In *Inception*, Dom Cobb (played by Leonardo DiCaprio) delivers the famous quote about the power and resilience of ideas while explaining his work to Saito.

The most resilient parasite:

"What is the most resilient parasite? A bacteria? A virus? An intestinal worm?

An idea. Resilient... highly contagious. Once an idea has taken hold of the brain, it's almost impossible to eradicate.

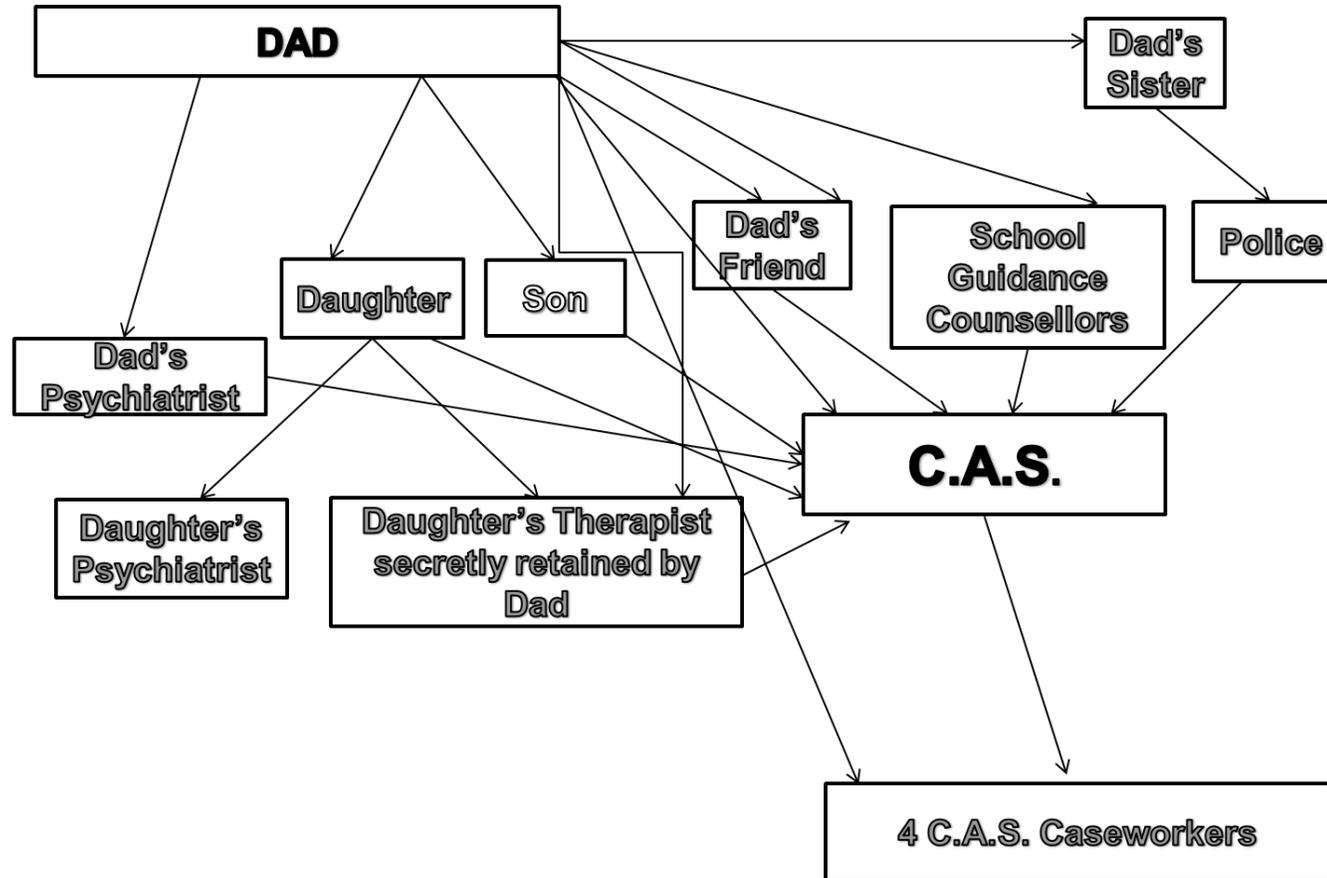
An idea that is fully formed—fully understood—that sticks, right in there somewhere".

The idea as a virus:

Cobb reiterates this concept later in the film when talking to Ariadne about his guilt over his wife, Mal:

Cobb: *"An idea is like a virus, resilient, highly contagious. The smallest seed of an idea can grow. It can grow to define or destroy you".*

What's the Source of the Idea?



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

Refuting the corrupted or influence VOC involves many of the same techniques used to refute the alienating parent's narrative

AP Tactics Related to Credibility

- The aligned parent offers the Court no real answer – therapy without living with and experiencing life with the formerly psychologically-bonded parent can't work. They accept no responsibility, over-empower the children and refuse to abide by Court Orders
- Typical “logical traps” used by aligned parents:
 - **TP “won’t listen to the children”** (when all the children are saying is “get out of my life” or just minor complaints)
 - **TP “won’t change”** (without articulating the issue or explaining why it wasn’t an issue before separation or how the TP is supposed to demonstrate change to the children when they don’t see him/her)
 - **I can’t/won’t force them to visit** - They are old enough to decide for themselves
 - **The children just need peace** and not more therapy
 - **I am powerless** to procure phone calls, visits, stopping anti-social behaviour

AP Tactics Related to Credibility – 2

- Typical “logical traps” used by aligned parents:
 - **I can’t/won’t force them to visit** - They are old enough to decide for themselves
- Fortune Magazine March 30, 2009 article on Ray Dalio (former manager of the world’s largest hedge fund):
 - *“The thing that makes him different is an intolerance for the inadequate answer. He’ll just keep peeling back layer after layer to get at the essential truth”*

THE ANSWER: You are either lying about your good faith efforts or you are completely ineffective as a parent – either way you are not an appropriate trustee for the children’s right to have a relationship with the other parent. (resulting in custody reversal as per *Rogerson v. Tessaro – Ont. CA 2006*)

THE ANSWER 2 – Please present to us (TP and therapist and assessor) the expressed rationale of the child and please do so in a manner which is solvable and not definitive and unsolvable/unforgiveable

Neuroscience and *The Teen Brain* and the Science of Suggestibility

Prof. Laurence Steinberg (*“Age of Opportunity”* and *“Adolescence – 10th ed.”*) and Dr. Dan Siegel (*“Brainstorm”*)

Jurisprudence re weight of children's views vs. adolescence extending to age 24

- Also relevant to never giving up on older teens, since these relationships are meant to last a lifetime

Pruning of the pre-teen brain at 10-11 coincides with PA onset Loss of or fading of old favourable memories inconsistent with the internal working model of the TP in the AP's home “invalidating environment”

- Effect of invalidating environment on new brain growth
 - “ruts in the road”; Maintenance of cognitive distortions; Impaired critical thinking skills

Higher risk of PA as individuation is already a programmed developmental step – easy to divert

- The teen's search for new and exciting experiences
- Physical changes and sleep deprivation

Neuroscience -2

Memory formation and plasticity

Dr. Elizabeth Loftus, Dr. Julia Shaw, and Clawar/Rivlin (Children Held Hostage, 2nd ed.)

Suggestibility in Legal Contexts, Ridley, Gabbert, Rooy, 2013 Wiley-Blackwell

Trauma

Splitting

Sickinger v. Sickinger, 2009 CanLII 28203 (ON SC), para 17: In cases such as this, the child, who is tired of the parents' "warfare" with one another, cannot take the tension and stress any longer and simply wants it all to stop. Since the warfare does not stop, the child sees the way out as discontinuation of access visits with the parent who does not have the primary residence.

Critical Thinking Skills

Conflict Resolution

Assertiveness vs Submission

Enmeshment

Insights From Jurisprudence on Children's Voices

Extensive jurisprudence on low to no weight being placed on children's testimony in PA cases

Similarly in cases of enmeshment or alliances or vicarious expression of a parent's views or coaching or lack of cognitive ability to express independent views in circumstances

Lack of ambivalence or balance or willingness to forgive a key criteria

Regardless of source (even professionals); interviewer bias

Repeated questioning held to alter, recreate or contaminate memory so that children adopt the AP narrative of abuse

Lack of credibility/reliability and inconsistent with other evidence

Interviews where the dominant parent is present or listening in or takes the child

How to Hear the Voice of the Child – There is No Perfect Solution

Child Representation

Assessments

Judicial Interviews – issues and concerns

Therapists

Child testimony

Children can reach a stage of distrust and fatigue after being interviewed by OCL, CAS, therapists, Police and parental coordinators and refuse to participate

Sometimes you don't get the truth except by taking the child out of the invalidating environment and allowing natural behaviour and historical attachment to take over

1. The reversal of residence cases
2. Placement in temporary foster care or with a relative

Jurisprudence on Providing the Voice of the Child Through Children's Counsel

Concerns apply to other conduits as well

General rules of evidence: relevance, exclusionary rule, judicial discretion

Hearsay: depends on whether advancing for the truth of its content vs for the fact it was made

Discretion: voir dire on necessity/reliability

- Usual credibility assessment
- Query reference to consistency over time

State of mind exception still subject to tests of necessity/reliability for truth of contents

Residual discretion to exclude based on direct evidence trumping hearsay evidence

Evidence Law Issues Pertaining to Indirect Children's Testimony/Evidence

Who was in the room, or listening in at the time (doctors office, CAS interviews in the home)

Motive to fabricate

Corroboration by related evidence

Entire circumstance/environment in which statement made

Look for manipulation, coercion, pressure, spontaneity, timing of event to statement, non-verbal communication

Can you interview the child (and get collateral evidence from family members and schools and doctors) after several days away from the dominant parent and before they can re-program the child

COMPETING NARRATIVES COMPLICATE THE UNDERSTANDING OF TRUTH

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.

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 and lack of transparency as to resolvable issues**
- ❖ **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 – [A Game of Whack-A-Mole](#)
- ❖ 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 or authentic child**
- ❖ **Neuroscience**
- ❖ **Guilt**
- ❖ **Grief**
- ❖ **Splitting**
- ❖ **The children's lawyer's narrative is not my narrative**

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

❖ Loyalty-binds (pathological alliances)

❖ 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 - 1

- ❖ **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**

Mistaken Therapist Narratives - 2

- ❖ I am doing individual therapy instead of family systems interventions – so I refuse to be directive/authoritative and unwittingly make things worse**
- ❖ The danger of the blindly-aligned individual or specialist (eating disorder) therapist**
- ❖ 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 “EITHER-OR 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”

Assessments and Legal Cases Gone Wrong

Falling prey to the “Framing Game”

- Issues vs inherent flaws in TP; situational vs actual persona
- The relational expectations of compromise and forgiveness
- It is irrelevant that the children do well in other areas
- Age – these relationships are meant to last a lifetime

Falling prey to “mixed Pathology” – overlooks the BUT-FOR test, disproportionality, past non-issues now becoming terminal, failure to weigh disparity of parental behaviours

Failure to conduct-consider collateral interviews, documentation, source of hatred, adult/scripted language

Failure to apply recognized methodologies or to understand family systems and the pathological alliance (AP as self-appointed advocate/protector of the child) or errors in logical or inductive reasoning

Assessments and Legal Cases Gone Wrong - 2

Failure to reflect on failure of prior therapeutic and other interventions

Failure to reflect on why sustainment of the dynamic (no healing)

- Which members of family system are motivated re solutions and prepared to forgive, forget and move on
- Who is fixated on blame and co-opting therapists and others
- Why no healing in the face of attachment system pressure to return to historical bonding
- New cognitive distortions and false allegations
- “The Pounce”

Failure to consider alternative explanations that have the same effect: maternal gatekeeping, enmeshment, anxiety projection, splitting

Lack of Progress/Change as a Diagnostic Tool

Relational dynamics require a corresponding compromise or movement on the part of the favoured parent and/or child if the targeted parent compromises or adjusts some aspect of their parenting. Where this does not occur, the aspect of the narrative that has been addressed can be partially disproven

Favoured parents are also deficient in emotional intelligence and empathy. They are cognitively blind to the impact of their statements and actions. They are so bound up in their own narrative that they cannot absorb messages from the Court, therapists, assessors and others. Altering this self-absorption and “concrete thinking” or attempting to alter it is instructive. “to accurately size up a human situation you have to project certain quality of attention that is personal, gentle, respectful, intimate and affectionate -more moving with and feeling into than simply observing with detachment.”

“When a Heart is Empty” by David Brooks, New York Times, September 10, 2020.

Emotional IQ and the heart are the key to understanding. Lack of demonstrable understanding can betray false allegations.

Many legal cases have refuted allegations where sequential sharing of contrary information is simply dismissed by the proponent of the false allegation, often without direct knowledge to refute the contrary facts.

Credibility Versus Reliability

Credibility has to do with a witness' veracity and sincerity

Reliability has to do with the accuracy of their testimony and engages a consideration of their ability to accurately observe, recall and recount the events at issue.

Significant inconsistencies and conflicting evidence on the record can impact both credibility and reliability of a witness

A witness whose evidence on an issue is not credible cannot give reliable evidence on the same point. Credibility, on the other hand, is not a proxy for reliability: a credible witness may give unreliable evidence.

Even a truthful [credible] witness may not be reliable. A witness may believe that he or she saw something but not have been in a position to make an accurate observation. Sincere witnesses can be mistaken.

A person with flawed memories of events long past, if believed, can give all the appearances of authenticity.

It is not enough for a witness to believe that an alleged fact is true. The strength of one's belief often has little to do with the existence of the fact at issue.

It is important to probe whether a witness is drawing inferences from facts they have observed [a function reserved to the Court] or invoking assumptions about relevant background [breaching the "Benny Hill" principle] and whether they directly witnessed an entire scene, including precursor and postscript, or only part of the scene.

Cognitive Biases and Lack of Reliability

Transference.

One sided prior knowledge/data/documents.

Anchoring, confirmatory and other inferential reasoning errors.

Check root source of information, if not directly observed. Multiple reports may indirectly result from one source.

Base rate neglect and failure to adequately consider objective family history.

Inconsistent statements and actions of the witness in other forums or toward other persons or entities.

Static views which are not continually adjusted as new information is available.

Link between extreme beliefs and less critical insight and inability to update views and hypothesis.

Factors in Assessing Credibility -1

Courts are forced to “synthesize” evidence by considering all of the evidence in the context of, and to be tested by, all other evidence.

Judges create perceptions of witnesses, their memory, reliability, manner of communication (sincere, complete and truthful) honest versus careless with facts, reticent or evasive in cross examination.

Normal inconsistencies amongst various witnesses are to be expected. Perfect congruence suggests scripted testimony.

General integrity of the witness, their power to observe, capacity to remember and accuracy of statements.

Are they honestly endeavoring to tell the truth in a sincere and frank manner or are they biased, reticent and evasive?

Does the witness have any interest in the Trial outcome or relation to a party or any motive to fabricate?

Factors in Assessing Credibility - 2

Inherent plausibility of their evidence and consistency with the probabilities of hypotheses affecting the case as a whole

Inconsistencies and weaknesses in evidence: internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony and the documentary evidence and the testimony of other witnesses.

Where appropriate, was the witness capable of making an admission against interests or against the party who called them (i.e. balanced testimony) or were they self-serving?

Courts are not required to believe or disbelieve a witness' testimony in its entirety. Part or all of a witness' testimony may be accepted and different weights attached to different parts of witness' evidence.

Extreme and highly inflammatory statements are likely to negatively impact credibility as is exaggeration of incidents and events to bolster the case.

Often unjustified "fears" and "discomfort" can be found to be an orchestrated campaign to distort events in such a way as to garner favour with the Court.

Proof of manipulation of a child to a third-party service provider (schools, doctors, therapists) is very damaging

Factors in Assessing Credibility - 3

Repeated refusal to abide by Court Orders damages credibility.

In a case involving false allegations of physical and sexual abuse by a parent who *“demonstrated an abiding distrust of anyone who disagreed with her as well as a marked tendency to leave out details if they did not conform to her belief (and who) when confronted with additional or contrary information, she discounted it’s reliability or significance”* the parent was found to be noncredible because her memory was *“frequently skewed and largely self-serving”* and her account of events did not make sense in light of the other evidence.

A parent’s credibility may also be undermined where they are found to be overly and unnecessarily critical of the other parent, including in multiple domains of their life, many of which were not relevant to the issues of the children.

Multiple complaints to police and child protection authorities can damage credibility or lead the Court to conclude that the parent *“is not only inclined to see evil in the benign but is specifically attempting to demonize the other parent to enhance their position”*.

Where a parent’s position in the case and actions exhibit significant disconnects with their evidence, they will be found to be noncredible. The typical alienating parent’s assertion that they “encourage” the children to see the rejected parent, while at the same time giving extensive evidence and filing complaints about how abusive the other parent is and that the children are justified in their rejection, will reveal that their “real” position was that it was not in the children’s best interest to see the other parent and that in fact they were “not encouraging” the children to do so.

Testing the Credibility of the Favoured Parent

For each crucial step taken in the family history, what were their other options?

For example, why did they not attempt to discuss a concern allegedly raised by a child with the other parent before making allegations to child protection and police authorities?

When issues arise, do they act as parents do in an intact family [pulling together in common cause after discussion and compromise] or do they act in a divisive manner or to capitalize on mistakes made?

Guidance, boundaries, incentives and consequences in their parenting generally and in managing the children's alleged refusal to see the other parent. Examine consistency of approach, thoroughness, parenting practices.

Is their parenting enmeshed or intrusive or vastly overly permissive?

THE SOCIAL SCIENCE LITERATURE THAT I USE

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Proving Your Case in Court, in Therapy, to Assessors and to Child Protection Authorities



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