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How Judges and Therapists Might Work Together

When young adolescents refuse access, the family often finds itself in court. The problem presents in many ways, but generally there are two categories: the merely difficult, and the horribly complex.

In merely difficult cases, the refusal of access is not associated with all sorts of abuse allegations and absolute demonization of the refused parent. The favored parent doesn't know what to do about the child's strong refusal of access to, and complaints about, the refused parent. She (it is usually the mother) at least partly wants a solution and is worried about what is happening in the family and to her children. However, she too harbors some doubts about, or fear of, or animosity toward, the other parent. Generally, these cases need two things: referral to a therapist experienced with this problem, and some form of mandated access that must occur. The judge often has the benefit of expert assessments to help with the decision.

In the horribly complex cases, the refusal of access is associated with all sorts of abuse allegations and a general demonization of the refused parent, both in the present and in memories of the past. The favored parent is convinced access is bad for the children and adamantly opposes it. Often the family has generated an atmosphere of intense fear of the refused parent. There are often many hearings and assessments. Often, many agencies and professionals have been involved, offering differing opinions and recommendations. Finally, some unfortunate judge has to decide what to do and becomes case manager. We are talking about cases where the judge decides that preservation of access to, or restoration of a viable relationship with, the refused parent is in the best interest of the child or children. The judge orders a process to achieve this.

The following guidelines about this process are derived from the experience of a therapist who has sometimes been designated to treat both types of cases—the merely difficult and the horribly complex. In general, I have come to the conclusion that these families need the help of both the court (authority) and the therapist. The problem that generally arises here is that the two roles—authority and treatment—are not kept sufficiently distinct, with detrimental consequences both for the therapy and for the family.

Guidelines:

1. **Access** is the most important part of the treatment. It is more important than the counseling sessions. Without access of some sort, the refusal/splitting/alienation becomes more and more entrenched. Waiting for the children to be ready almost never works and usually makes things worse. The judge needs to decide and

specify how much access, when it is going to occur, if and for how long it will be supervised, etc.

2. **Authority:** Judges tend to download authority and decision making onto the therapist. A court order often states that the therapist will determine if access is going to occur, and when, and whether it will be supervised or not, etc. This seems like a good idea, but it doesn't work. What happens is that the entrenched conflict about the best interests of the children, and about the intense beliefs of each parent, are transferred from the court to the therapist's office. No therapy can happen, because the parents are compelled to argue their case incessantly with the therapist. The children too just argue their case with the therapist. At each critical juncture, someone says to the therapist, "You have to decide." Whatever he decides, he loses the trust of one side, and his ability to help is crippled. **The therapist needs to be in the position that both access and treatment have been compelled by a higher authority.** The therapist's job is to help the family get through it by offering a place to talk about difficulties and issues, not to decide if or when it is going to happen.

3. **Children's Choice:** The favored parent will invariably tend to rely on the children's choice and lobby for this. Adolescent children will adamantly maintain that it is up to their choice, and that they cannot be forced. Various child advocates will tend to take the same position. (For my thinking about this issue, see the paper *The Dangers of Children's Choice.*) Once it has been decided that access is in a child's best interest, both the court and the therapist need to insist that it occur. The child's total empowerment must be replaced with some adult authority and structure. The favored parent needs the help of the court and of the therapist to realize it is her responsibility and duty to insist that access occur, just as she must insist that the children go to school or the doctor. The therapist has to help the refused parent to be patient, stop blaming, and relate to his child's real difficulties. **The therapist must be able to rely on the court's decision compelling access and treatment.** Then the therapist can help with all the stress and turmoil that accompany this. It is as though the therapist is in the position of helping the family undergo a painful and difficult, yet necessary, medical procedure.

4. **Collaboration:** In complex cases, some collaboration between judge and therapist is often necessary. The judge/case manager must remain the decision maker. But the judge also needs the benefit of the therapist's experience with the family. The way to accomplish this is to set up the case in such a way that the therapist can report to the judge. The therapist will make clear to the parents that his role includes reports to the judge if necessary, and that these reports will be treatment reports, not evaluative or assessment reports. These reports, along with case conferences that include the judge, the therapist, and both lawyers, can help overcome impasses. **The key is that authority and decision making remain**

with the judge, while the therapist deals with the emotional issues and helps the family with a difficult process.

5. **Remember, the main work is with the parents, not with the children.** The children cannot be expected to relinquish their symptom (refusal) unless there has been some alleviation of the forces that caused it—the parental conflict and attitudes, and the breakdown in parental authority. In some complex cases, this conflict goes way back, prior to the separation. When the favored parent is absolutely entrenched in his or her demonizing attitudes toward the refused parent, such that joint sessions are impossible, and no progress in access can be made because the children also are entrenched, then the therapist might suggest **plan B** (#6, below). When plan B doesn't work, the court and therapist must consider drastic measures (#7, below)

6. **Plan B:** If the favored parent is not cooperative and the children are 14 or older, it is worth a try, as a last resort, to focus treatment on just the childrenand the refused parent. The children can be approached as having a handicap—a dysfunctional divorced family—that requires learning a new perspective and new strategies. Resistance to this will be great, and strong authority will be required. The refused parent can learn how to cope with the children's reactions and challenges. The Court will need tostay in charge and require specified access, organized so that the child or children can isolate the two worlds and the stress of transfers is kept to a minimum. In general, leaving it to the children without improving the family atmosphere, and setting up a very divided life, are not recommended. But these may be preferable to losing a parent because of the family war and distortions. With children 13 or younger (the ages herein are somewhat arbitrarily chosen), it may be more advisable to look at more drastic measures (see below).

7. **Ultimate issues:** What can be done when the favored parent cannot and will not cooperate in achieving access or with the treatment? This sometimes happens, and it is a huge problem and dilemma. The favored parent and the children simply dig in and maintain that it is up to the children's choice, and that they can't be forced. The therapist and the judge become demonized along with the refused parent. At this point, both the judge and the refused parent have to consider drastic action. The Court has to consider how far it is willing to go to enforce its determination that access is in the children's best interests. The options range all the way to citations for contempt and **changing custody**. These are drastic measures, and I have seen cases where I felt they would be helpful and appropriate, and others where they probably would not work or would be too risky.

   The refused parent has to consider giving up and losing his children, rather than continuing to expose them to more conflict and litigation. Again, sometimes I have advised fathers that this is the best they can do; and at other times I have felt they must not give up, but continue to try to get the court to take drastic action. It

depends on the psychological and developmental circumstances of the particular family. In general, I have wished the court were prepared to take a stronger stance more often than the contrary. This being said, we really don't know what the consequences would be, because it has so seldom been tried. We do know that it is very risky indeed for the refused parent actually to give up and go away. This tends to cement, legitimize, and validate the alienation reaction, with serious long-term consequences. **A more complete discussion of this issue can be found at the end of the Treatment section of the main paper, where there is reference to a specialized treatment program and a fourfold strategy.**

8. **Caution:** The foregoing has all assumed that the refused parent, usually the father, is cooperative and willing to do anything to recover a relationship with his child or children. It also assumes that the court has decided, often after expert assessment, that reunification with the alienated parent is in the best interests of the child. There are cases where the refused parent is not cooperative, or is in fact very dysfunctional or disturbed, or has been physically or sexually abusive to the children. In these kinds of cases, the above reasoning and guidelines do not apply.

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