

# PARENTAL ALIENATION, CONTACT REFUSAL AND MALADAPTIVE GATEKEEPING: A MULTIDISCIPLINARY APPROACH TO PREVENTION OF CONTACT FAILURE

*Philip Marcus\**

## I INTRODUCTION

This paper proposes a multidisciplinary approach, based in part on a quasi-medical analogy, for prevention of one of the most difficult situations facing family courts and therapists – when contact between a child and a parent does not take place: contact failure.

At present, these situations are handled by professionals in three fields: mental health, social work, and the court system. The issues are dealt with only when the problem has become acute – when contact between the child and a parent has already been or is about to be severed. Little or nothing is done to prevent contact failure, and by the time the parents or one of them ask for help, much damage has already been done, and the situation may be irrevocable. There is, therefore, a need for early identification, both of the populations of children and parents who are at-risk of contact failure, and the first signs of distress which point to the possibility of a child ceasing to have contact with one of his parents. This requires the harnessing of members of many professions in a coordinated effort.

This paper describes, on the basis of published research and personal experience, as a family lawyer and family court judge, the factors which may lead to failure of contact, and suggests methods of preventing it.

## II THE QUASI-MEDICAL ANALOGY

In our lifetime, poliomyelitis has been almost completely eradicated. The eradication took place in stages: First, the medical world treated the symptoms, but not the cause, and only when the disease became acute; they called the disease by its symptom – infantile paralysis. The second stage was the identification of the poliomyelitis virus leading to a specific diagnosis. The third stage was recognition of the method of transmission of the virus. As a result, the public was made aware of the risk factors and encouraged to take appropriate

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\* Judge (retired), Jerusalem Family Court, Israel.

precautions (including handwashing after using the lavatory) for prevention. Finally, a vaccine was developed, by Dr Jonas Salk; the WHO recommended universal vaccination; governments made vaccination compulsory; and lives are saved in their hundreds of thousands.

This medical victory has the following components:

- identifying the phenomenon;
- identifying the causes;
- identifying at-risk populations; and
- raising public awareness of the disease and its causes, and development of preventive techniques.

This paper seeks to apply the lessons learned from the eradication of polio to a phenomenon which affects millions of children, and in many cases causes them lasting emotional and psychological damage: the cessation of contact between a child and his parent. It looks to the fields of epidemiology and public health, and suggests how educational and health professionals and others should be involved in prevention and early intervention.

Adoption of the epidemiology/public health model would include:

- increasing public awareness of the phenomenon and its causes;
- enabling identification of at-risk populations and of the first signs which point to behaviours which are liable to cause a child to resist contact with a parent and outright refusal of contact; and
- taking steps to prevent contact failure.

The medical analogy is of course not a perfect fit. However, where there is a possibility that a child will – without good cause – stop having any contact with one of his parents, it is possible to educate about the risk factors and dangers of contact failure, and about the first signs which point to the possibility of the development of alienation, and thereby prevent deterioration.

Identification of the early signs is crucial; the period of time between the first signs of resistance to contact and the total breakdown of contact may be as little as 3-4 months.<sup>1</sup> Restoration of contact later is exceptionally difficult.

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1 Mordechai Sheri (Clinical Psychologist, expert witness in Family Court cases involving children, Israel), (personal communication, 2017).

### III CONTACT FAILURE, PARENTAL ALIENATION, REFUSAL, RESISTANCE AND GATEKEEPING

Parents are the adults who are primarily responsible for raising their children, and whose basic concern should be the best interests of the child (see, for example, article 18 of the 1990 UN Convention on the Rights of the Child, hereinafter “CRC”). The Convention imposes duties on the States parties to it to ensure performance of certain obligations. Among these are, that parents protect their children from harm (article 3), and encourage and enable them to develop normal inter-personal relationships. This includes the duty to allow the child to be the child of two active and involved parents (article 9 of the CRC establishes that a child who is separated from one or both parents shall maintain personal relations and direct contact with both parents, except if it is contrary to the child’s best interests) and to encourage him to love both of them (articles 24 and 27 of the CRC provide that the child’s health and physical, mental, spiritual, moral and social development be assured). In biblical terms, we speak of giving the child the opportunity to honour both parents. This brings with it the duty of each parent not to interfere with the development and keeping of good relationships.<sup>2</sup>

When the parents of children are at odds, even when divorce or separation proceedings have not yet started, their children are inevitably affected by the changes in their lifestyle; the foundations on which their lives have been built are shaking, and they will have to live, at best, in two homes rather than one. Where the parents are preoccupied with the dispute, they may have less time to attend to the children’s needs. When the dispute develops into open conflict, the children very often find themselves exposed to arguments and verbal and physical fights; this undermines their sense of safety and stability. They hear things that one parent says to, or about, the other parent. Where one parent opposes the separation, the child, who also fears the breakup of the family, may identify with that parent. The child may feel angry, abandoned, and injured, and he may find himself taking sides in the dispute or being enlisted by one parent against the other.<sup>3</sup> This is exacerbated when the parents separate and disagree as to where the children are going to live and who is going to make decisions about them, and the best interests of the child have to be determined by the court.<sup>4</sup>

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2 P. Marcus, ‘Parental Responsibilities: Reformulating the Paradigm for Parent–Child Relationships’, *Journal of Child Custody*, Vol. 14, No. 2-3, 2017, pp. 83-105 and 106-33. In this two-part article, I deal with the responsibilities of parents to children, not in terms of the rights of the child, nor on the basis of parental rights, but on a foundation of duties and responsibilities.

3 Z.B. Bergman & E. Witztum, ‘Parental Kidnapping and Parental Alienation Syndrome’ *Sichot (Hebrew)* Vol. 9, No. 2, 1995, pp. 115-130; D. Gottlieb, ‘Parental Alienation Syndrome’, *Medicine and Law (Hebrew)*, Vol. 31, 2004, pp. 106-116.

4 In my article, op cit, n. 2, I criticize the use of terms such as custody and visitation, which exacerbate the legal confrontation between the parents. Even where these terms have been replaced by parental responsi-

Sooner or later, especially in situations of high conflict between the parents, some children stop seeing one of the parents. This is referred to in this paper as “**contact failure**”.

There may be many reasons for contact failure:

- Where the child has been physically or sexually abused by a parent, or a parent has abused or killed the other parent, the child (or resident parent on the child’s behalf) may be justified in breaking off contact with the perpetrator.
- Sometimes a child will choose to break off relations with one of his parents, so as to resolve (he thinks) the impossible conflict of loyalties that he feels.
- In other cases both parents may bear part of the responsibility.
- However, in many cases one of the parents has acted or said things to the child which have caused the breakdown of contact.

The term “**parental alienation**” became popular in the late 1980’s, principally as a result of the work of Richard Gardner, who described contact failure as the parental alienation syndrome.<sup>5</sup> He suggested that one parent was always to blame when contact failed, and suggested methods, some of them quite radical and alarming, to change the situation.

Others place the blame, or at least part of it, on the child. There are cases in which children, and particularly adolescents, refuse contact, and both the parents and their advisors are sure that the parents bear no responsibility. This is the basic understanding of the terms “**contact refusal**” or “**contact resistance**”, or the **refuse-reject dynamic** (RRD).<sup>6</sup>

In some jurisdictions (such as England and Wales<sup>7</sup>), the failure of contact is sometimes described as being the result of an **intractable dispute** between the parents. The word “intractable” implies pessimism about the possibility of resolving the issues, and carries with it a negation of the parents’ joint responsibility to act in their children’s best interests, as if they may continue their fight regardless of the effect it has on their children.

All of the terms usually used to describe the situation in which arrangements for a child to have contact with a parent do not take place – parental alienation, contact resistance or refusal, intractable dispute, and the like – imply blame, which requires a judicial finding of fault, with the child or with a parent.

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bility, or joint or shared custody, the parents feel compelled to fight about recognition as the dominant or more important parent. The reality is that parents often argue over these issues, instead of looking hard and clearly at the needs of the specific child and the ability and availability of each parent to supply these needs, so as to reach an agreed arrangement for the benefit of the child.

5 R.A. Gardner, *The Parental Alienation Syndrome*, 2nd ed., Creskill (New Jersey), Creative Therapies Inc., 1998.

6 M.G. Walters & S. Friedlander, ‘When a Child Rejects a Parent: Working with the Intractable Resist/Refuse Dynamic’, *Family Court Review*, Vol. 54, No. 3, 2016, pp. 424-55.

7 See, for example, *Q v R (intractable contact)* [2017] EWFC B35.

It is regrettable that in many circles, *all* cases in which a child ceases to have contact with a parent are attributed to parental alienation, that is, to the acts or omissions of one parent only. This encourages high conflict disputes, in which the child is the inevitable victim, wounded, often critically, by the incessant crossfire between the parents. It is perhaps because of the indiscriminate use of the term “parental alienation syndrome” that lawyers and others contend that there is no such thing.

Use of this type of emotionally loaded blaming terminology has two effects, both of which obstruct the finding of solutions. One effect is that the use of a quasi-scientific terms diverts the discussion away from looking at the individual child and his family. Instead, the parents, their lawyers and expert witnesses spend time and resources fighting over whether the facts of the case fit or do not fit the criteria for the existence of the syndrome, or over who is at fault. In the meantime, the child’s feelings of guilt, and/or his conviction that his hostility to one parent and alliance with the other parent are justified, only become more embedded. As Walters and Friedlander have observed:

Time is a major enemy in RRD cases. The dynamic becomes increasingly entrenched the longer it remains unaddressed and the longer the period of no contact between the rejected parent and the child. The excruciatingly slow pace at which the court system moves also delays efforts to resolve the problem and may be exacerbated by a prolonged evaluation, and as well as litigation over intervention. In fact, delay has often been employed as a legal tactic in such cases, especially in cases of older adolescents, as the court is less inclined to intervene as the adolescent gets older, and once the adolescent turns eighteen the court no longer has jurisdiction.<sup>8</sup>

The second effect is the false impression that until there is total absence of contact, and sometimes even then, nothing should be done (or perhaps can be done) about a family in which relations between the parents, or between a parent and a child, are at risk. This is exacerbated by the classification of contact failure as *mild* – where the child is reluctant to have contact but still sees the targeted parent and enjoys his stay; *medium* – where the child resists visiting and if he does see the targeted parent, curses him or accuses him, and may destroy property; and *severe* – when no contact is possible.<sup>9</sup> As this article demonstrates, there is a need for intervention at the first signs of reluctance, since the speed of deterioration is very swift. While the description of the child’s behaviour is accurate, the classification of mild may give the impression that intervention is as yet unnecessary.

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8 Walters & Friedlander, *op cit*, n. 6, p. 429.

9 <https://psychlaw.net/are-there-different-degrees-of-parental-alienation/>.

There are still therapists who refuse to take on helping a child who is in the throes of a high-conflict battle between the parents until there is a final judicial decision about custody and related matters. Their rationalizations include an unwillingness to taint any evidence of the suffering of the child, or fear of manipulation by one or other parent of the treatment or findings. To the contrary, any signs of reluctance of a child to have contact with a parent must be tackled immediately, and it is unfortunate that there are professionals who are prepared to justify non-involvement for reasons that are irrelevant to the issues at stake.

#### IV WHY DOES CONTACT FAIL?

Most researchers and practitioners dispute the need to use the terminology of a syndrome, and prefer to identify the causes of the problem on a case-by-case basis.<sup>10</sup> ‘Contact failure’ is a neutral description of these situations, and avoids allocating blame. Quite simply, the fact is that contact, ordinarily the natural connection between child and parent, is not taking place.

In what follows, this paper will principally discuss the fourth of the causes of “contact failure” identified above, what might be called true parental alienation, where one parent behaves or speaks in a way which distances a child from the other parents. However, many of the recommendations and suggestions for early identification of distress in a child and for immediate intervention are equally applicable to cases in which the child himself, without pressure from one of the parents, becomes reluctant to have contact or breaks off contact, or cases in which *both* parents bear some level of responsibility

It is rare for one parent to say directly to the child that he must have no contact with the other. The reasons why a child stops seeing a parent usually build up over time. But where one of the parents has, by words or actions, made it more difficult for the child to enjoy contact with the other parent, or has encouraged the child, by action or default, to form an unjustifiably negative view of the other parent, this is a manifest breach of his obligation, identified above, to encourage correct and loving relations between the child and the other parent.<sup>11</sup>

##### A *Gatekeeping*

Much of this behaviour falls within the category of “parental gatekeeping”. Parental gatekeeping refers to how parents’ attitudes and actions affect the involvement and quality of

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10 B.J. Fidler, N. Bala & M. Saini, *Children Who Resist Post-separation Parental Contact*, Oxford, OUP, 2013; S. Friedlander & M.G. Walters, ‘When a Child Rejects a Parent’, *Family Court Review*, Vol. 48, No. 1, 2010, pp. 98-111.

11 Text to n. 2 *supra*.

the relationship between the other parent and child, whether positively or negatively. Gatekeeping takes many forms, and is not necessarily inappropriate; it may be facilitative or restrictive. Facilitative gatekeeping occurs when a parent acts to support continuing involvement and maintenance of a meaningful relationship with the child. 'Facilitating' behaviours are proactive, inclusive, and demonstrate to the child that the parent values the other parent's contributions. "Restrictive" gatekeeping entails parental actions intended to interfere with the other parent's involvement with the child and that would predictably undermine the quality of their relationship. Sometimes restrictive gatekeeping is essential, for example where there has been a history of abusive or inappropriate behaviour of the parent toward the child or in his presence; but if gatekeeping is damaging to the child, it is 'maladaptive': it unnecessarily damages the quality of the other parent's relationship or restricts the level of his involvement with the child.<sup>12</sup>

For this reason, the appropriate question to ask in any case is not just whether gatekeeping is restrictive. The issue is whether, in the particular circumstances of the specific child, the gatekeeping is appropriate or maladaptive.<sup>13</sup> that is, whether it serves the child's interests or deprives the child of the contact he needs, for his healthy development, with the other parent.

### B *Maladaptive Gatekeeping and Alienation*

According to Darnall,<sup>14</sup> alienating parents (including parents who engage in maladaptive gatekeeping) fall into three main categories:

- Those who do it consciously out of spite and/or hatred; they know it is wrong but seek vengeance and "justice", or payback for the perceived responsibility of the targeted parent for failure of the marriage, etc. They may make false accusations of abuse of the child. This is described as conscious, malicious, direct and active behaviour.
- Those who do it because of a personality defect or disorder; they do not see it as being wrong. They have no insight, and externalize responsibility.
- Those who do it carelessly, almost passively, because they do not understand what they are doing or the effects of what they are doing on the child, or they do not understand that the child's refusal is an inadequate way of coping with a very difficult situation,

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12 W.G. Austin, L. Fieldstone & M.K. Pruett, 'Bench book for assessing parental gatekeeping in parenting disputes: understanding the dynamics of gate closing and opening for the best interests of children', *Journal of Child Custody*, Vol. 10, 2013, pp. 1-16.

13 M.A. Saini, L.M. Drozd & N.W. Olesen, 'Adaptive and Maladaptive Gatekeeping Behaviors and Attitudes: Implications for Child Outcomes after Separation and Divorce', *Family Court Review*, Vol. 55, No. 2, 2017, pp. 260-72.

14 D. Darnall *Divorce Casualties: Protecting Your Child from Parental Alienation*, Lanham (Maryland), Taylor Publishing Co., 1998.

and thus do not try to stop it. This is described as naïve, unconscious, or manipulative alienation (or gatekeeping).

The first and third categories of maladaptive gatekeeping and alienation may be preventable, by suitable education and intervention at the first signs. This paper suggests suitable techniques below. However, the second category needs to be dealt with by the court as soon as possible, since the perpetrators are susceptible to neither education nor persuasion, and will manipulate or sabotage attempts at mediation or treatment.

In the current state of the literature, good progress has been made in identifying the reasons for contact failure, and in particular in honing the definition of gatekeeping and its typology. Maladaptive gatekeeping is a precursor, and also a predictor, of alienation of a child from the parent. To this extent, we are, as regards contact failure, at the same point as the second stage in the fight against polio: the symptoms have been described, and the causes of the phenomenon have been identified. The challenge is to proceed to the next stages: arousing public awareness and developing measures that prevent the problem from becoming pathological.

It is unlikely that contact failure can be prevented in all cases: for example, where there are false allegations of abuse, including sexual abuse (as part of a programme of alienation<sup>15</sup>) and when the child is convinced that he was abused as an infant. It is unlikely that such cases would be susceptible to the measures proposed here. However, prevention of contact failure will generally be to the great benefit each child.

## V WHY WE NEED TO PREVENT CONTACT FAILURE

Understanding the short- and long-term effects of alienation on children is crucial when considering if, when and how there should be intervention. There is a wealth of literature about the effects of alienation and maladaptive gatekeeping that consistently reports that alienated children are at risk of emotional distress and adjustment difficulties, far more than children from litigating families where there has been no alienation.

### A *Alienated Children Suffer*

Children who stop having contact with a parent often express fear of that parent, even though the fear may have no rational basis. Clinical observations, case reviews and both qualitative and empirical studies uniformly indicate that alienated children may exhibit:

- poor reality testing;

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15 Fidler, Bala & Saini, op cit, n. 10, p. 40.



- illogical cognitive operations;
- simplistic and rigid information processing;
- inaccurate or distorted interpersonal perceptions;
- disturbed and compromised interpersonal functioning;
- self-hatred;
- low self-esteem, or inflated self-esteem or feelings of omnipotence;
- pseudo-maturity;
- identity and self-image problems;
- poor differentiation of self (enmeshment, parentification);
- aggression and conduct disorders;
- disregard for social norms and authority;
- poor impulse control;
- emotional constriction, passivity, or dependency; and
- lack of remorse or guilt.<sup>16</sup>

B *Adults who Were Alienated as Children Suffer*

In a qualitative retrospective study of adults alienated as children, it was discovered that these adults suffered from:

- low self-esteem, having internalized the negative characterization by the alienating parent of their rejected parent;
- self-hatred, self-blame and guilt for abandoning younger siblings;
- significant episodes of depression (seventy percent of those interviewed);
- use of drugs or alcohol during adolescence, to cope with painful feelings arising from loss and parental conflict (one third of the sample);
- self-doubt about their own perceptions and feelings about themselves and others;
- difficulty trusting other people, and fear that they will never be loved;
- high rates of divorce (two-thirds had been divorced once and one quarter more than once);
- anger and resentment about being emotionally manipulated and controlled;
- negative effect on their relationship with the alienating parent;
- alienation from their own children.<sup>17</sup>

Where therapeutic interventions were tried, poorer outcomes were described when the reactions began in earlier childhood than in adolescence. Further, in a follow-up study,

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16 Ibid, p. 99.

17 A. Baker, *Adult children of parental alienation syndrome: Breaking the ties that bind*, New York, W.W. Norton, 2007.

highly successful outcomes occurred only in a minority of cases, and these successes were more likely with early intervention and prevention when alienation was first alleged.<sup>18</sup> This shows clearly the importance of early identification, intervention and prevention for this younger age group. Better long-term outcomes were found when the predominantly negative feelings for one parent developed during adolescence (12 to 15 years), when primarily in reaction to the recent divorce, compared to earlier in childhood. The adolescent's resistance or rejection was a developmentally expected coping mechanism.

C *Alienation Is Maltreatment*

Child abuse and neglect are child maltreatment, which has been defined by the World Health Organisation as:

All forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child's health, survival, development or dignity in the context of a relationship of responsibility, trust or power.<sup>19</sup>

High levels of parental conflict, maladaptive gatekeeping and alienation should be identified by child protection agencies as emotional abuse and neglect.<sup>20</sup> A child who exhibits serious symptoms such as anxiety, depression, withdrawal, self-destructive or aggressive behaviour or delayed development<sup>21</sup> may have been subjected to maltreatment by a parent. Of course, any professional observing such symptoms must carefully explore the possibility of other reasons for the child's distress, with or without family stresses.

Child protection workers must therefore keep in mind the possibility of contact failure. They may be the first people outside the family to see the beginnings of contact failure, including maladaptive gatekeeping and alienation by one of the parents. Failure of a parent to cooperate with treatment that has been recommended for helping the child, for example by failing to bring the child to therapeutic appointments or to attend relevant appointments themselves, strongly indicates maladaptivity. Child protection personnel should regard such behaviour as abuse, and act accordingly, according to their powers.

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18 J.R. Johnston, & J.R. Goldman, 'Outcomes of family counseling interventions with children who resist visitation: An addendum to Friedlander and Walters', *Family Court Review*, Vol. 48, No. 1, 2010, pp. 112-15.

19 A. Butchart, A. Harvey, M. Mian & T. Kahane, *Preventing Child Maltreatment: A guide to taking action and generating evidence*, Geneva, World Health Organization, 2006.

20 A.N. Joyce, 'High Conflict Divorce: A Form of Child Neglect', *Family Court Review*, Vol. 54, No. 4, 2016, pp. 642-56.

21 B.J. Fidler, N. Bala, R. Birnbaum & K. Kavassalis, *Challenging Issues in Child Custody Disputes: A Guide for Legal and Mental Health Professionals*, Toronto, Thomson Carswell, 2008.

However, in most jurisdictions, child protection agencies do not intervene if they believe that one of the parents is adequate, as they consider that the family assessments and court proceedings between the parents are enough to address any protection concerns. This is caused or exacerbated by the dichotomic approach to the needs of the child. This may be manifested by the splitting of judicial authority in many jurisdictions between different courts (Family Courts and Juvenile Courts), or the different procedures for handling public law and private law cases involving children, or by separate agencies, each with its own procedures and approach, such as child protection agencies and general social services. There is a need for synchronization and a holistic approach; all of the issues regarding a specific family should be allocated to one judge, who can bring together all the judicial disputes and all the investigative therapeutic services relating to a specific child.

#### D *A Public Health and Child Protection Issue*

We have to understand that contact failure, in particular in the context of high conflict and alienation, is a public health<sup>22</sup> issue of great importance. At this point, however, the focus of research and programming has been on the legal proceedings, and trying to help the parties and their children in individual cases where contact has already failed or is on the brink of doing so.

There is a compelling state interest in preventing the development of full blown contact failure, in terms of savings in the budgets of court systems in handling these cases, and reductions in spending on social services and medical facilities in treating the child-victims long-term. Short-term intervention at the outset and avoidance of contact failure will be far less costly than the huge expense of investigations, court proceedings, and the involvement of social and mental health services to try to help those who have been damaged by alienation from a parent.

#### VI AT PRESENT, CASES ARE DEALT WITH WHEN THE CONTACT HAS ALREADY FAILED

In the vast majority of cases, the parents come to court only after they move physically to live separately. But the conflict between them, characterized by arguments and silences, if not worse, is apparent to children long before this. Children start to react to stress immediately, from the outset. This has visible symptoms, but there is also strong evidence of

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22 V.C. Vezzetti, 'New approaches to divorce with children: A problem of public health', *Health Psychology Open*, July-December 2016, pp. 1-13.

epigenetic damage – that is, delayed or arrested brain development – whose effects may only become apparent in the long term.<sup>23</sup>

Judges in Family Courts are frequently asked to deal with cases in which contact has already failed. The alienated parent may not have been aware of maladaptive and alienating behaviour of the other parent; for this reason, in many cases, a claim is filed in court only when contact has failed altogether.

Where contact has failed the court needs to act promptly to reinstate contact, unless there is substantial proof that the protection of the child cannot be ensured except by preventing any contact – and where this is alleged, the allegation must be adjudicated immediately. This is an emergency, and it is often essential to take immediate steps, even before a full diagnosis, and make clear and unequivocal orders for the reinstatement of contact and therapeutic assistance.<sup>24</sup> But experience shows that in many cases, there is no way to turn back the clock.

Once contact has stopped, it is extremely difficult to reinstate. In my experience, specific orders for contact may be unsuccessful. Often the parent with whom the child lives is obstructive, and can be dealt with by imposition of sanctions on the alienating parent, like a financial fine, or reduction of child support, or imprisonment.<sup>25</sup> But no progress can be made in cases where both parents say that they genuinely want the child to have contact but the child is intransigent, despite referrals to psychologist and social workers, and despite meetings with the judge.

Some judges become frustrated and angry with children who unreasonably (in the eyes of the judge) refuse contact. Just two years ago, a judge in Michigan, USA, threatened children (one of whom was nine years old) with imprisonment because they refused to see their father, and ordered the 13 year old to be handcuffed and led away to the Children's Village, forbidden contact with his mother and siblings. When that happened, the 9 year old, who had previously agreed to see his father, changed his mind and said he wanted to be with his older brother.<sup>26</sup> (The judge was found to have committed no less than 15

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23 J.L. Hanson et al, 'Behavior Problems After Early Life Stress: Contributions of the Hippocampus and Amygdala', *Biological Psychiatry*, Vol. 77, No. 4, 2015, pp. 314-23.

24 "For the non-intractable RRD cases, the damaging effect of time can be mitigated through educational efforts aimed at prevention, identification of at-risk cases early in the legal process, and early intervention. However, as it is not usually clear in the beginning whether a family will become intractable, having a more sharply focused awareness of the potential for intractability can lead to early implementation of court orders that include the structures necessary for effective treatment. Having these structures already in place can expedite the process of holding family members accountable for their part in unraveling and resolving the RRD. This, in itself, creates momentum for change." Walters & Friedlander, *op cit*, n. 6, p. 429.

25 The Jerusalem Family Court imposed the following sanctions on a father who refused (despite court orders to do so) to take part in treatment of the children whose contact with the mother was failing because of his actions: restraining the father from leaving the country and banning him from using debit cards: F.C. 4287-07-15 *Anon v. Anon* (20 April 2017).

26 *Eibschitz-Tsimhoni v Tsimhoni*, Case No. 09-76649-DM, 6th Circuit.

breaches of her judicial duties.<sup>27</sup>) This is, of course, an egregious case, but it exemplifies the inability of the court to force a child to see a parent from whom he has been alienated.

Various programs for re-establishing contact have been set up, and some of them appear to be quite successful.<sup>28</sup> However these programs often involve an intensive sleep-away camp, and are very expensive. Some programs have been devised for early intervention. The Child-Centered Conjoint Therapy, which is aimed at children from pre-school age focuses on the child's need to master developmental skills and appropriate behaviour despite parental conflict, has been adapted to respond to resistance or refusal by the child to have contact with a parent.<sup>29</sup> However, these valuable programs receive referrals from the court or mental health or social work professionals only when the child has exhibited signs of resistance to contact or has already ceased to have any contact with one of the parents. In many cases, the therapy and persuasion are unsuccessful, and the parent and the court have no alternative but to suspend efforts to reestablish contact, and have to "let go".<sup>30</sup>

For this reason, it is of particular importance that there be prompt judicial action to nip in the bud actions by one of the parties unjustifiably to reduce the level of contact between the child and the other parent. For example, moving the child from his residence to a place far from the home one of the parents without that parent's consent must be met with immediate and strong action to keep the child in his accustomed location or to return the child after the non-consensual move. Any attempts to breach an order of the court must be faced with strong sanctions. There are, unfortunately, judges who, after the child has been improperly moved, will take account only of the "need" of the child not to be moved again and not take notice of the cumulative effect of reducing contact with the parent who stayed put; thus, the unscrupulous parent takes advantage of his own wrongdoing.

## VII WHERE DO WE STAND?

Applying the quasi-medical approach, it is clear that the present state of judicial and therapeutic play regarding contact failure is at the stage before Jonas Salk invented the vaccination against polio in the early 1950's. The phenomenon of contact failure is recognized (symptoms), although there is insufficient awareness of the existence of the phe-

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27 D.P. Ryan, *Report of Hon. Daniel P. Ryan, Master Appointed by the Michigan Judicial Tenure Commission*, Formal Complaint No. 98, July 1, 2016.

28 See, for example, R.A. Warshak, 'Family Bridges: Using Insights from Social Science to Reconnect Parents and Alienated Children', *Family Court Review*, Vol. 48, No. 1, 2010, pp. 48-80.

29 L.R. Greenberg, L.D. Fick & R.A. Schneider, 'Catching them before Too Much Damage is Done: Early Intervention with Resistance-Refusal Dynamics', *Family Court Review*, Vol. 54, No. 4, 2016, pp. 548-63.

30 This is taken from the title of chapter 5.3 at page 103 of Fidler et al, op cit, n. 10.

nomenon and its severity; the causes are known (the virus); attempts are made to deal with alienated children (treatment); but little or nothing is being done to prevent the occurrence of the phenomenon (vaccination). In short, at this stage the literature and case law deal in the main with identifying the situations in which alienation and gatekeeping have already caused contact failure, and judges and mental health and social work professionals try to reverse contact refusal. They are usually unsuccessful.

For this reason, we must look for ways of preventing parental alienation, or at least reducing its incidence. Making maladaptive gatekeeping and alienation into a crime, or defining it as abuse so as to invoke child protection measures, will not by themselves prevent parents from doing these things, any more than laws against child sexual abuse prevent abusers from their reprehensible acts. We need to enlist members of all those professions whose activities can make a difference. This includes enhancing public awareness of the existence of maladaptive gatekeeping and parental alienation and the damage they cause, and teaching those who come into contact with children about ways to identify distress in children and intervene in a timely fashion, to prevent the damage from happening.

## VIII A MULTIDISCIPLINARY APPROACH TO ADVANCING KNOWLEDGE OF CONTACT FAILURE, ITS SYMPTOMS AND RESULTS

The existence of gatekeeping and parental alienation is unknown to wide sections of the public. Only those families (a minority, in most countries) who have experienced a breakdown between the parents in which one of the parents, consciously or otherwise, tries to turn a child away from proper contact with the other parent will be aware of the phenomenon.

### A *Public Awareness*

Prevention of a disease or any other negative phenomenon requires that all those who may be at risk have the necessary knowledge. The prevention of polio was impossible until the public was made aware that a virus was responsible, that preventive steps could be taken, and that the vaccine was available. Such programming requires collaboration between the therapeutic community, educators and media people.

Fidler, Bala and Saini speak of primary prevention: focusing on “the entire population who may be at risk of parent-child contact problems after separation”; and then of secondary prevention, targeting “children and parents who have been identified at greater risk of

becoming involved in alienation”); and tertiary prevention, where there are severe levels of alienating behaviors.<sup>31</sup>

On primary prevention, Pickar and Kauffman say the following:

Psycho-educational programs are helpful before people decide to have children together and when raising children, and are especially valuable if they find themselves having relationship difficulties or are in the very early stages of separation. These programs can assist parents to develop effective communication, problem solving and conflict resolution skills, and effective parenting and co-parenting, including learning about the importance for their children of maintaining positive relationships with both parents and about the harm of alienation. Programs explaining the various methods of non-adversarial dispute resolution and the negative effects of parental hostility and litigation are imperative. While such programs may not prevent the most severe cases of alienation from occurring, they have positive value for many parents and children.<sup>32</sup>

Similarly, as examples of primary prevention, Fidler and her colleagues propose public announcements, awareness campaigns, and presentations in the community and at schools about the risks. In short, the public needs to be informed of the possibility that parental separation may cause serious and long term problems for children. This should take the form of education, in the latter years of high school, in the context of life skills and relationship classes, which include (or should include) courses on parenthood. These classes have for some years included material on interpersonal violence and abuse; our characterization of alienating behaviour as maltreatment that is abusive of the child makes the case for inclusion of programming on gatekeeping and alienation.

In addition, when prospective marriage partners meet with counsellors, those counsellors should include reference to the adverse effects on children if the marriage gets into difficulties. There is also a need for a movie or a television series about parental alienation and its effects.<sup>33</sup> The press and other media need to be alerted to the cases of contact failure, and not only by disgruntled parents in specific sensational cases; journalists and editors should be provided with suitable background material.

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31 Fidler et al, op cit, n. 10, p. 106.

32 D.B. Pickar & R.L. Kaufman, ‘Parenting Plans for Special Needs Children: Applying a Risk-Assessment Model’, *Family Court Review*, Vol. 53, No. 1, 2015, pp. 113-33.

33 The Michigan case mentioned above (n. 26) would need little dramatization; it involved court proceedings over several years. Untold suffering, not to speak of wastage of resources – court time and lawyers’ fees – could have been avoided by identification of the personalities of the parents and the children, and of the high intensity of the conflict between the parents, together with resolute court action mandating therapeutic intervention and zero tolerance for alienating behaviours.

Without awareness of the potential problems, people will have little incentive to join educational relationship programs. The emphasis here is on reaching the entire population of children and parents, including people who have children outside marriage or commitment to any long-term couple relationship; the responsibility of both parents to the child starts from conception and subsists throughout the child's minority, regardless of any legal relationship between the parents.<sup>34</sup>

Fidler and her colleagues are not convinced that such campaigns will be effective with those parents in high conflict cases, many of them exhibiting signs of personality disorders or mental illness, who will be least able to identify and address their alienating behaviours.<sup>35</sup> With respect, I agree: mere publicity about the existence of the phenomenon and its dangers will be ineffective in many cases, and needs to be backed by the involvement of those who come into frequent contact with children, and who can tell the parents that something is wrong and refer them to counseling and treatment.

This paper does not ignore the many excellent programs for separating and divorcing couples and their children, including classes to which parents are referred at the outset of court proceedings, and we have already mentioned intervention processes when gatekeeping and alienation have been established. However, the thrust of this article is to try to prevent the occurrence of these phenomena altogether: stretching the medical metaphor maybe beyond its tensile strength, to "vaccinate" the public.

*B Early Identification of At-Risk Populations and of Behaviour which May Lead to Contact Failure*

Any child whose parents are going through a rough patch in their relationship may be exposed to arguments and disputes, and will in all likelihood suffer some consequences. However, a majority of children will weather the storm, as a result of the child's personality and/or as a result of adequate actions and explanations by the parents together, the presence of loving grandparents, or other protective factors.<sup>36</sup> However, as the level of conflict becomes higher, or as the child is more susceptible, the danger of lasting damage increases. So this paper proposes identification of those children who may be especially susceptible to damage, and of those parents who are liable to behave in such a way as to endanger their children.

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34 See Marcus, *op cit*, n. 2.

35 On the prevalence of personality disorders in parents involved in high conflict disputes, see B. Eddy, *The Future of Family Court*, Scottsdale AZ, High Conflict Press, 2012, pp. 2ff. At p. 20, he says the following: "How does the judge know that it is a potentially high-conflict case? When one or both parents seek to restrict the other's parenting time".

36 "Invincible kids", in the words of Professor Gerald Caplan (personal communication, 1991).



C *The Role of Professionals*

All those whose profession brings them into contact with children should be encouraged to identify the signs that behaviour by a parent, which may endanger the child's ties with the other parent and so be problematic. This will require alerting both parents to the situation – of whose existence, or of whose problematic nature, one or both of the parents may be unaware – and advising them that they might need counseling or other help.

In the past few decades, medical and educational professionals have become more aware of the existence of parental child maltreatment, physical, emotional and sexual, and are taught to spot the signs in their pupil/patient populations. In many jurisdictions, they are required to report their suspicions and findings to the child protection authorities. It is important to put in train a similar process in the case of mental-emotional abuse and neglect by maladaptive gatekeeping and alienation. Lawyers and judges should also be made aware of the need for immediate, authoritative and detailed orders where contact failure is liable to happen, in light of the urgency of these cases and the potential for lasting harm to a child if contact with a parent fails completely.

This will require training of these professionals, and setting up appropriate therapeutic services for advice and counselling for parents and help for the children. The cost of such short-term intensive services will be far less than the cost of providing legal, judicial, social work and mental health services if the maladaptive and alienating behaviour is allowed to continue and cause contact failure.

In a workshop presented at the Annual Conference of the Association of Family and Conciliation Courts, in June 2018, Dr Tirtza Joels and I presented a detailed analysis of the signs of distress in children that might be reactions to parental disputes, and described the types of services which need to be made available to children and their parents for immediate intervention, since, as we have shown, time is of the essence. The workshop included recommendations, adapted to specific professions, for early detection of children and parents who are in this context at risk, and of maladaptive gatekeeping and alienating behaviour by one of the parents. The intention is to equip teachers and kindergarten staffs, school counsellors, pediatricians, family doctors and nurses with the information they need, and recommendations how they can approach parents and guide them to obtain help, advice and, where necessary, treatment, for themselves and their child, so as to ward off the possibility of further harm by contact failure.

IX CONCLUSION: PREVENTION

Parental alienation, and its precursor or predictor – maladaptive gatekeeping – are known to the legal and mental health professions. At-risk populations have been identified, and

the results of contact failure are recognized. But little or nothing is being done to prevent the development of these highly damaging phenomena. This issue is almost unknown outside the welfare, mental health and legal professions and those families who are directly involved. Its results are very serious, and cause damage, often permanently, to the children involved. It is a child protection and public health issue, over and above the need to help those directly involved.

Using a systemic, multidisciplinary approach, this paper has argued that preventive steps can and should be taken. These include:

- making the general public aware of the existence of maladaptive gatekeeping and parental alienation and their destructive results;
- enlisting all agencies, public and private, that educate for family life, including schools, youth movements, religious and communal organizations, to include programming about the vulnerability of children to marital strife and the dangers of contact failure;
- alerting and educating personnel in the professions that come into contact with children and their parents about the warning signs and indicators that alienation is possible;
- coordination between these professions and counseling and treatment services in the community;
- setting up services – a one-stop-shop – for immediate counselling and intervention when contact failure is perceived as a possible outcome of disputes in the family; and
- encouraging courts to tackle these situations in a speedy and effective fashion.

It is for each community and jurisdiction to work out how to best act to prevent children from becoming cut off from their parents.