



AFCC eNEWS

MONTHLY E-NEWSLETTER
VOL. 5 NO. 8
AUGUST 2010

Register Now for AFCC's Ninth Symposium on Child Custody Evaluations

Early bird registration is available for AFCC's *Ninth Symposium on Child Custody Evaluations*, October 28–30, 2010, at the Hyatt Regency in Cambridge, Massachusetts. Take in autumn in New England, enjoy a crisp morning walk by the Charles River and see the historic sights of Boston, Cambridge, Charlestown and more. As for the Symposium, there are more than 75 presenters including the leading practitioners, authors and instructors in the field in a choice of four pre-symposium institutes, two plenary sessions, and 30 conference workshops.

[Click here for the conference program...](#)

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Special Issue of *Hofstra Law Review* on Collaborative Law Available Online

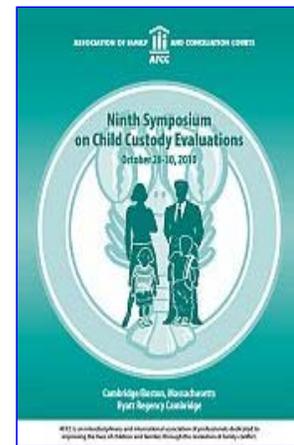
The Winter 2009 issue of *Hofstra Law Review* (Vol. 38, No. 2) is a special symposium issue dedicated to collaborative law. It includes the final version of the Uniform Collaborative Law Act (UCLA), approved by the National Conference of Commissioners on Uniform State Laws at its 118th annual Conference in July 2009. The law review articles arose from a conference on collaborative law held at Hofstra Law School in November 2009 and are written by leading academics, judges, collaborative law practitioners, and other professionals providing a behind-the-scenes look at the drafting process of the UCLA; insight into conference discussions; the repercussions that intimate partner violence may have on a collaborative law process; and the biological, ethical, and psychological issues that arise in the context of collaborative law.

[Click here for Table of Contents and links to the articles...](#)

Member News

Andrew Shepard, AFCC member from Hempstead, New York, has been nominated as one of the best law teachers in the United States as part of the "What the Best Law Teachers Do" project at Washburn University School of Law. The goals of this project are to identify the best law teachers in America, synthesize the principles by which they teach, and share these

UPCOMING CONFERENCES



AFCC Ninth Symposium on Child Custody Evaluations
October 28–30, 2010
Hyatt Regency Cambridge
Cambridge/Boston, MA

AFCC 48th Annual Conference
June 1–4, 2011
Hilton Orlando Bonnet
Creek Resort
Orlando, Florida

AFCC Regional Training Conference
October 27–29, 2011
Hyatt Regency Indianapolis
Indianapolis, Indiana

AFCC 49th Annual Conference
June 6–9, 2012
Hyatt Regency Chicago
Chicago, Illinois

principles and the stories of these exceptional teachers by documenting them in a book. Andy is the Director of the Center for Children, Families and the Law and a Professor of Law at Hofstra University School of Law, as well as the Editor of *Family Court Review*.

Jill Egizii, AFCC member from Leland Grove, Illinois, is hosting a new radio show called *Family Matters* on www.syndicatednews.net, which airs on Wednesday nights biweekly from 7-8:30 EST. Jill is the author of a novel titled *The Look of Love*.

In Memoriam

Ellen Cowell, Founding Member of the AFCC Missouri Chapter

Ellen Kaye Cowell, nee Esterly, 42, died Wednesday, August 4, 2010, at her home in Webster Groves, Missouri, surrounded by her family after a courageous three-year battle with cancer. She graduated from Belleville Township East High School in 1985. After obtaining her BS degree from the University of Missouri in 1989, she went on to Auburn University and received her Masters degree in Marriage and Family Therapy in 1991. She eventually worked with the St. Louis County Family Court as a mediator, a role she held for sixteen years. Ellen and AFCC Board member Andrea Clark were instrumental in founding the AFCC Missouri Chapter. AFCC extends condolences to Ellen's colleagues, friends and family.

AFCC's 48th Annual Conference June 1–4, 2011 Call for Presenters

Research, Policy and Practice in Family Courts: What's Gender Got to do with it?

Gender issues are frequently front and center when it comes to family law. But how important is gender? What does the research tell us?

[Click here for Call for Presenters...](#)

[Click here to submit a proposal by the October 6 deadline...](#)

Read the following to see how gender factors into political decision making:

Why Gender Neurology Matters in Political Decision Making

By Ruth Bettelheim, Ph.D., courtesy of the Huffington Post

Neuroscience research confirms that, when stressed, men tend toward "fight or flight" reactions, while women prefer to talk—and that men take more risks, while women are generally more cautious. However, neither the mechanisms underlying these findings, nor their implications for businesses, politics and families, have been adequately explored.

[Read more...](#)

ASK THE EXPERTS

Top Ten Biases Often Overlooked by Child Custody Evaluators

By David Martindale, Ph.D., ABPP (forensic), St. Petersburg,

AFCC 50th Annual Conference

May 29–June 1, 2013
J.W. Marriott Los Angeles at L.A. Live
Los Angeles, California

Ontario Chapter Annual Conference

October 14–15, 2010
The Future of Family Law
University of Toronto Residences
Toronto, Canada

[More information...](#)

Texas Chapter Annual Conference

October 15–16, 2010
Children Caught in the Conflict: A Multidisciplinary Perspective
Houston, Texas

[More information...](#)

Arizona Chapter Annual Conference

January 28–30, 2011
Sedona, Arizona

[More information...](#)

California Chapter Annual Conference

February 11–13, 2011
Times They are a-Changing
The Mark Hopkins Hotel at Nob Hill
San Francisco, California

[More information...](#)

UPCOMING AFCC TRAININGS

Advanced Issues in Child Custody: The Child's Perspective

Mindy F. Mitnick, Ed.M., M.A.
Sept. 30–Oct. 1, 2010
Kansas City, Missouri

[More information...](#)

Parenting Coordination: Working with High Conflict Families

Robin M. Deutsch, Ph.D.
December 6–7, 2010
Baltimore, Maryland

Florida

[David Martindale is teaching an Institute, The Essentials of Child Custody Evaluations, at the Ninth Symposium on Child Custody Evaluations on October 28, 2010 in Cambridge, Massachusetts.]

None of us is free of bias. Biases come in various forms, but as the term is used here, it will refer either to any tendency to process the information that we gather in a manner that is strongly influenced by our personal and professional beliefs (attitudinal biases), thereby impairing our objectivity, or to the methods utilized by us in processing information (cognitive biases).

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FEATURED ARTICLE

The Peacemaking Option for Divorce and Dissolution of Domestic Partnerships: How Family Scientists Support Interest Based Conciliation and What This Means for Separating Couples

By Thurman W. Arnold III, courtesy of Mediate.com

Anyone who has experienced "adversarial divorce by Court process" knows that it is toxic, uncontrolled and uncontrollable, destructively expensive, and that it resolves only legal rights—typically unsatisfactorily—while ignoring the personal grieving and raw disruptions that accompany almost all relationship breakups. This lingering dislocation, pain, and resentment is perhaps the most devastating aspect of contested, adversarial divorce because not only does it fail to heal old wounds, it gouges new ones.

[Read more...](#)

FAMILY LAW IN THE NEWS

One-Size-Fits-All Approach to Child Custody Dangerous for Mum, Child

Courtesy of DNAIndia.com

Child custody evaluators should know how to differentiate between types of violence, because a one-size-fits-all approach to custody can endanger both mums and kids, according to new American research.

The University of Illinois study reveals that evaluator's beliefs generally fall into two categories, and one group is far more likely to prioritize safety for women and children when making custody decisions.

[Read more...](#)

[One of the researchers quoted in the above article, Jennifer Hardesty, Ph.D., will be part of a panel presenting a workshop at the Ninth Symposium on Child Custody Evaluations in Cambridge/Boston, Massachusetts on October 29, 2010: New Research on Child Custody Evaluations and Domestic Violence: Implications for Practice and Professional Education.]

Eliminating Child "Custody" Tries to Ease Pain of Separation

By Denise Ryan, courtesy of the Vancouver Sun

Parenting Coordination: Advanced Practice Issues

Matthew J. Sullivan, Ph.D.
December 8–9, 2010
Baltimore, Maryland

Advanced Parenting Coordination Practice: Working with Parents and Children

Joan B. Kelly, Ph.D.
February 1–2, 2011
Tampa, Florida

Intractable Issues in Child Custody Disputes

Mindy F. Mitnick, Ed.M., M.A.
February 3–4, 2011
Tampa, Florida

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ABOUT AFCC eNEWS

AFCC eNEWS is a monthly e-newsletter published by the Association of Family and Conciliation Courts (AFCC). *AFCC eNEWS* provides professionals with time sensitive and up-to-date topics including practice tips, research innovations and international news. Readers are welcome to forward this e-newsletter to interested colleagues.

[AFCC eNEWS archive...](#)

Website Version:

If you are having trouble

families negotiating the most painful aspect of separation and divorce: custody of their children.

Changes proposed for B.C.'s Family Relations Act include eliminating the terms "custody" and "access," and replacing them with new concepts of "guardianship" and "parental responsibilities."

[Read more...](#)

Adults Recall Negative Events Less Accurately than Children, Study Finds

Courtesy of ScienceDaily

Emotions—particularly those provoked by negative events—can cause distorted, inaccurate memories, but less often in children than in adults, according to a new Cornell study. The findings, published online in the *Journal of Experimental Child Psychology*, contradict prevailing legal and psychological thinking and have implications for the criminal justice system, report Charles Brainerd and Valerie Reyna, professors of human development and co-authors of the 2005 book *The Science of False Memory*.

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National Conference of Commissioners on Uniform State Laws

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Top Ten Biases Often Overlooked by Child Custody Evaluators

By David Martindale, Ph.D., ABPP (forensic), St. Petersburg, Florida

None of us is free of bias. Biases come in various forms, but as the term is used here, it will refer either to any tendency to process the information that we gather in a manner that is strongly influenced by our personal and professional beliefs (attitudinal biases), thereby impairing our objectivity, or to the methods utilized by us in processing information (cognitive biases).

The task of the evaluator is to take all reasonable steps to (a) identify all foreseeable sources of bias, (b) eliminate those that can be eliminated, (c) minimize those that cannot be eliminated, and (d) be alert to the ways in which both attitudinal biases and cognitive biases can impair our ability to formulate sound opinions.

This article will provide a brief discussion of ten often over-looked biases. The phenomena involved in these will be easily recognizable, but our collective failure to discuss them may be attributable to the fact that they have gone unnamed.

1. The first of the "newly named" biases makes its appearance during the data gathering process and shall be dubbed the *Jiminy Cricket Bias*. It is the *Jiminy Cricket Bias* that leads otherwise rational evaluators to believe that they can detect deception in custody litigants as easily as Jiminy Cricket detected lying by Pinocchio. It is this bias that leads evaluators to ignore the research that documents our inability to discern who is being candid and who is not, and, as a result, neglect to obtain verification of data relied upon.

2. It is during the data integration stage that we encounter the *Troxelological Bias*—named by me for the deliberative process employed by the Superior Court trial court judge in the *Troxel* case, who decided that, in making sense of the issues before him, it would be useful to "look back at some personal experiences. . . ." [*Troxel v. Granville*, 530 U.S. 57 (2000), at 61.] Looked at broadly, the *Troxelological bias* is a tendency to make sense of what is going on in the lives of others by examining the events in their lives as though what we have learned in our own lives can be applied to the lives of others.

3. The third of the "newly named" biases operates during the closing stage of the evaluation—the stage at which many evaluators formulate their recommendations. It is the *Neuman Bias*, named after Alfred E. Neuman of "What, me worry?" fame. This bias is reflected in recommendations that are little more than expressions of naive optimism for which no basis can be found in the record. A common example is the joint custody recommendation—the foundation for which is the unsupported prediction that parents who have been unable to agree on the day of the week for the last five years will develop the motivation and skills needed to engage in cooperative co-parenting.

4. The *Imperium curia* bias is a baseless belief in the power of the court; specifically, the belief that anything that the court orders can be accomplished. The example that follows has been taken from a report. A

recommendation for joint custody is followed by this statement: "The authority of the court should be used to get Mr. and Mrs. X to engage in cooperative co-parenting. Each parent is intelligent, each parent is educated, and each parent presumably respects the legal system."

5. The *UPAE* bias* [*Unfortunate Past As Excuse] refers to a tendency to permit sympathy for parents with unfortunate pasts to influence evaluators in the formulation of their recommendations. Example, from a report: "The Court's attention is called to the historical information appearing on pages X – X+12 of this report. During the period in the lives of young girls that most are enjoying their emerging sexuality, Sally's childhood was marred by" It is not within the scope of evaluators' authority to grant absolution to parents whose deficiencies are attributable to their mistreatment at the hands of others and to censure those whose deficiencies seem to have been self-cultivated. The evaluative task is descriptive in nature: It is to assess the parenting strengths and deficiencies in each parent as they relate to the needs of the specific child(ren) whose custodial placement is in dispute, to describe those strengths and deficiencies, and to articulate the ways in which they relate to each parent's ability to meet the needs of the children.

6. *Intervention bias* refers to an inclination to provide therapeutic intervention in the midst of a forensic evaluation. An example follows. The quoted words have been taken from an evaluator's deposition. In the midst of a lengthy evaluation, an evaluator endeavors to "arrange a deal [with the children]." Under the terms of this deal, the evaluator will submit an interim recommendation suggesting that the children "not have to spend as much time [with their father]." In exchange, the children would have to "behave, be lovely children... [and be] respectful and courteous" when with their father. The evaluator described the negotiations with the children as an "effort in a therapeutic-type basis..." and added: "I'm trying to improve the circumstances between the children and their father..."

What the evaluator has described is an effort to improve the interpersonal dynamics between the children and their father. This "therapeutic-type" undertaking compromises the evaluator's ability to perform the assigned task—to function as an impartial, objective evaluator.

7. Those affected by the *coniectura interdictum* [prohibited influence] *bias* seem to believe that there's no such thing as too much information. As a result, they tend to accept and consider all information provided by litigants without considering the possibility that some of it may have been illegally obtained or altered and of a type that evaluators should not consider. We are obligated to articulate the bases for our opinions. In many jurisdictions we would be prohibited from alluding to inadmissible material in order to meet this obligation. If an evaluator who has already been influenced by inadmissible information were to be prohibited from discussing the information, s/he would be unable to meet the obligation to articulate the bases for his/her opinions, and a motion might be made to preclude his/her testimony.

8. *Associative bias* refers to a positive bias that develops when evaluators discover that they share beliefs, interests, or experiences with one of the litigants but not with the other.

9. Evaluators display *empathy bias* when they disregard parental behaviors that have negative consequences for children simply because the evaluators have empathy for the parents who have engaged in the behaviors and because the evaluators can imagine themselves behaving in a similar manner. [*Empathy*: the intellectual identification with or vicarious experiencing of the feelings, thoughts, or attitudes of another.] Mrs. Hurt, angered by her husband's sexual rejection of her and his use of videos of other women as a masturbatory inspiration, installs a hidden video camera in Mr. Hurt's den, videotapes him as he masturbates, copies the tape, and distributes the tape to Mr. Hurt's co-workers. Mr. Hurt loses his job. He is the sole breadwinner in the family. The female evaluator states that she "can understand why Mrs. Hurt did this." There is no further discussion of Mrs. Hurt's actions.

10. Evaluators display *marital mindset bias* when their attention is focused on each litigant's strengths and deficiencies *as a spouse*, rather than on each litigant's strength and deficiencies *as a parent*.

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