



ASSOCIATION OF  
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eNEWS

#### AFCC 49th Annual Conference Wrap Up

The AFCC 49th Annual Conference, *Attachment, Brain Science and Children of Divorce: The ABCDs of Child Development for Family Law*, June 6-9, 2012, in Chicago, Illinois, had a record attendance of almost 1,300 family law professionals from 20 countries. Many attendees had the opportunity, in addition to hearing current research and spirited debate, to tour the "Windy City" to view the amazing architecture and dine in fabulous restaurants. Rumor has it that even some shopping was accomplished!

#### Conference Materials Available

AFCC has a limited number of USB drives containing conference session handouts available. To purchase, please call the AFCC office at (608) 664-3750. USB drives are \$20 for members and \$40 for non-members, including shipping to US addresses.

Due to numerous requests, Dr. Jennifer McIntosh has graciously made the text of her conference [plenary comments](#) available. Thanks to Dr. McIntosh.

#### Silent Auction

This year the AFCC 14th Annual Silent Auction raised a record amount—over \$14,000—for special projects and initiatives. This success was possible thanks to the generous donors, the wonderful team of volunteers and everyone who participated by bidding on items. Enjoy your winnings and thank you for your generosity!

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#### Thank you

AFCC thanks the sponsors of the 49th Annual Conference: Second City Sponsor [Schiller DuCanto & Fleck LLP](#); Platinum Sponsor [American Academy of Matrimonial Lawyers—Illinois Chapter](#); Gold Sponsors [Complete Equity Markets, Inc.](#), [www.OurFamilyWizard.com](#), [Berger-Schatz](#), and [Nova Southeastern University](#); Silver Sponsors [Feinberg & Barry, P.C.](#), [National Cooperative Parenting Center](#), The Fieldstone Family; and Local Sponsors Judge Karen G. Shields (Ret.), [Collaborative Law Institute of Illinois](#), [Loyola Civitas ChildLaw Center](#), [Mediation Council of Illinois](#), [Resolution Systems Institute/Center for Conflict Resolution](#) and [Creighton University](#).

AFCC also recognizes members of the AFCC Conference Committee, conference shepherds and collaborating organizations. Thank you for helping make the conference a great success.

[Read more](#)

#### Continuing Education Reminder

If you signed up to receive a certificate of attendance for the 49th Annual Conference and you did not turn in a [Verification of Attendance form](#) before leaving the conference, please download, fill out and return this important form. You may email, fax or mail the form to the AFCC office. This form must be completed and received in order for you to be issued your certificate of attendance. There is also a processing fee of \$15 for AFCC members and \$20 for non-members.

#### Awards

Andrew I. Schepard, Amy Holtzworth-Munroe, Lawyers for Children, Inc., Hugh Starnes and Greg Firestone were honored for their accomplishments at the AFCC Annual Awards Luncheon on June 7, 2012. Six AFCC Ambassador Awards were presented to Leslie Drozd, George Ferrick, Linda Fieldstone, Ernie Sanchez, Robert Simon and Susan Yates.

[Read more](#)

[See photos from the Awards Luncheon](#)

#### AFCC Board of Directors

AFCC is pleased to welcome Larry Fong of Calgary, Alberta, Canada and Larry Swall of Liberty, Missouri to the Board of Directors beginning July 1, 2012. A special thanks to Linda Fieldstone for her leadership and commitment to AFCC while serving as president and also to Robert Smith

MONTHLY E-NEWSLETTER  
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#### Upcoming Conferences

**AFCC 10th Symposium on Child Custody Evaluations**  
November 1-3, 2012  
Arizona Grand Resort  
Phoenix, Arizona

**AFCC 50th Anniversary Conference**  
May 29-June 1, 2013  
JW Marriott Los Angeles L.A. Live  
Los Angeles, California

**AFCC 51st Annual Conference**  
May 28-May 31, 2014  
The Westin Harbour Castle  
Toronto, Ontario, Canada

#### AFCC Chapter Conferences

**Minnesota Chapter Annual Conference**  
August 2, 2012  
University of Minnesota  
Continuing Education and Conference Center  
Saint Paul, Minnesota

**Ontario Chapter Annual Conference**  
*The GPS of Family Law... The Road Not Taken*  
October 19, 2012  
Bram & Bluma Appel Salon  
Toronto Public Library  
Toronto, Ontario, Canada  
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Do you have a question that you would like answered by an AFCC expert? Let us know and your question could be answered in the next AFCC eNEWS.  
[Email your question](#)

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for his outstanding service and many contributions during his terms on the board. The new Executive Committee, effective July 1, 2012, consists of President Arnold T. Shienvold, Harrisburg, Pennsylvania; President Elect Nancy Ver Steegh, St. Paul, Minnesota; Vice President Richard L. Altman, Napoleon, Ohio; Secretary Peter Boshier, Wellington, New Zealand; Treasurer Annette Burns, Phoenix, Arizona; and Past President Linda Fieldstone, Miami, Florida.

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In Memoriam: Judith Wallerstein

Dr. Judith Wallerstein, of Marin County, California, a long-time member of AFCC, passed away at the age of 90 on June 18, 2012. A true pioneer in divorce research, Dr. Wallerstein presented at numerous AFCC conferences and in 1997 was featured at the Second World Congress on Family Law and the Rights of Children and Youth and at the AFCC Annual Conference in Chicago in 2001. AFCC offers condolences to Dr. Wallerstein's family and friends.

[Read more](#)

Ask the Experts

Top 10 Ethical Issues in Forensic Consulting

*Robert Simon, PhD, Del Mar, California*

[Read more](#)

AFCC Chapter News

Congratulations to the Washington Chapter for earning its chartered status and to the Indiana Chapter and the Wisconsin Chapter for each earning their provisional status. Chapter activity is expanding around the world. Coordinating groups in Alberta, Illinois and Connecticut have all filed Letters of Intent to become chapters of AFCC. Groups in Australia, British Columbia, Georgia, Maryland, Michigan, Oregon and New Zealand are all in various stages of organization.

Energy and enthusiasm were high at a luncheon for chapter leaders held in Chicago during the annual conference. Those representing more established chapters were able to offer tips and advice to newer chapters—the AFCC spirit of sharing was well-evidenced.

Congratulations to our current and welcome to new and incoming Chapter Presidents: Arizona, Barbara Atwood; California, Thomas Trent Lewis; Colorado, Armand Lebovits; Florida, Lawrence Datz; Louisiana, Pam Baker; Massachusetts, Ilene Mitchell; Minnesota, Beth Harrington; Missouri, Rachael Kennedy; New Jersey, Ann Ordway; New York, Andrea Phoenix; Ontario, Barbara Fidler; Texas, Janet Denton; Washington, Daniel Rybicki.

Family Law in the News

### **Why Smart People Are Stupid**

*By Jonah Lehrer, Courtesy of The New Yorker*



*"I know so much that I don't know where to begin."*

Here's a simple arithmetic question: A bat and ball cost a dollar and ten cents. The bat costs a dollar more than the ball. How much does the ball cost?

[Read more](#)

**Parliament to End 50-50 Child**

*By Jennifer Buley, Courtesy of The Copenhagen Post*

Acknowledging that forced co-operation and shared custody do not work for all divorced families, politicians rethink law. In a unanimous decision, the political parties agreed last week on a plan to change the national child custody laws, abolishing the default 50-50 shared custody arrangement for the children of divorced parents.

[Read more](#)

**Navigating Without a Lawyer**

*By Rachel Birnbaum and Nicholas Bala, Courtesy of The Lawyers Weekly*

There is growing concern about the increasing number of family litigants without lawyers, but there is almost no research about why these litigants decide to have, or not have, a lawyer. We report here on the first study about the decisions of Ontario family litigants whether to have a lawyer.

[Read more](#)



## AFCC 2012 Awards

**Amy Holtzworth-Munroe, PhD**, was awarded the Stanley Cohen Distinguished Research Award, which recognizes outstanding research and/or achievements in the field of family and divorce. Dr. Holtzworth-Munroe was nominated for her extraordinary contributions in the areas of intimate partner violence/abuse (IPV/A) research and, more recently, screening for IPV/A in the family mediation context. She has also studied the effects of child-informed mediation.

**John Lande, JD, PhD**, was awarded the Meyer Elkin Essay Award for his article, “An Empirical Analysis of Collaborative Practice,” which summarized empirical research about collaborative practice, the collaborative movement, its interaction with other parts of the dispute resolution field, and its impact on the field. The Meyer Elkin Essay Award is presented to the author(s) of an article in *Family Court Review* from the previous year; the recipient is selected by senior *FCR* editorial staff. AFCC members can read this and other articles in the *FCR* online archives.

**Mike Murtagh** of Lawyers for Children, Inc. accepted the Irwin Cantor Innovative Program Award, which recognizes innovation in court-connected or court-related programs. Lawyers for Children (LFC) was founded in 1984 to address the lack of legal representation for children voluntarily placed in foster care. Since that time, LFC has grown to become one of New York’s premier child advocacy organizations, having represented over 20,000 children since its inception.

**Andrew I. Schepard** was presented with the John E. VanDuzer Distinguished Service Award. This award recognizes outstanding contributions and/or achievements by members of AFCC. Professor Schepard is the founder and director of the Center for Children, Families and the Law and Professor of Law at Hofstra University Law School. Since 1997 he has been the editor of *Family Court Review* and the recipient of many national and local awards. His passion for children’s rights is seen in everything he does.

**Hon. Hugh Starnes (Ret.)** and **Gregory Firestone, PhD**, were presented with the President’s Award, given by outgoing AFCC President Linda Fieldstone. Judge Starnes is a past president of AFCC as well as FLAFCC. Gregory Firestone is also a past president of FLAFCC and is a clinical psychologist and a practicing mediator.

Six AFCC Ambassador Awards were awarded; these awards recognize members who go above and beyond promoting AFCC and its mission as well as reaching out to other organizations. This year’s recipients were **Leslie Drozd, George Ferrick, Ernie Sanchez, Robert Simon, Susan Yates**, and outgoing AFCC President **Linda Fieldstone**.

Congratulations to all AFCC award recipients!

AFCC accepts nominations for the John E. VanDuzer Distinguished Service Award, Irwin Cantor Innovative Program Award and Stanley Cohen Distinguished Research Award throughout the year.\* Please visit the [Awards page](#) on the AFCC website for more information or contact [Erin Sommerfeld](#).

\*Nominations must be submitted by March 15 for consideration for presentation at the annual conference.



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AFCC thanks the volunteers who helped at the auction:

Mary Ferriter, Emile and Josie Kruzick, Dick Altman, Perri Mays, Grace Hawkins, John Harper, Annette Burns, Andrea Clark, Betsy Thomas, Mindy Mitnick and Mike Puia

And the many generous donors:

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## Top 10 Ethical Issues in Forensic Consulting

By Robert Simon, PhD, Del Mar, California

### 1. Know Your Role

Provision 3.05 of the APA *Ethical Principles of Psychologists and Code of Conduct* states that psychologists should refrain from entering into multiple relationships when doing so could compromise objectivity, competence or effectiveness.

Forensic Psychology Consultants who are engaged by attorneys to provide expert testimony and who also engage in “behind the scenes” discussions with attorneys regarding issues such as case development and case strategy or who engage in discussions that are unrelated to the proposed testimony may be engaging in multiple relationships that are not ethical. Since the efficacy of the expert witness depends, in part, upon their credibility and their ability to be neutral with regard to case outcome no matter who they are working for, engaging in work as a “behind the scenes” consultant may compromise efficacy as a witness as well as their objectivity, or perceived objectivity.

### 2. Know Your Client

Principle B of the APA Ethics Code, Fidelity and Responsibility, advises the psychologist to “Establish relationships of trust with those with whom they work”, and to “Clarify their professional roles and obligations, accept responsibility for their behavior, and seek to manage conflicts of interest that could lead to exploitation or harm.”

Be clear about who your client is—whom you work for, take direction from and are responsible to. Do you work for the attorney or do you work for the litigant? Define this explicitly and communicate this understanding to the attorney and the litigant.

### 3. Be Honest

Principle C of the APA Ethics Code, Integrity, states in part, “Psychologists seek to promote accuracy, honesty and truthfulness in the science, teaching, and practice of psychology. In these activities, psychologists do not cheat, steal, or engage in fraud, subterfuge or intentional misrepresentation of fact.”

Consultants and testifying experts remain true to the science of the field even when the retaining attorney may be displeased by the realities of the science. Consultants and testifying experts offer guidance and information that is accurate, even when doing so may run counter to what the attorney’s position is or what the litigant wants to hear.

### 4. Be Aware Of and Control for Bias

This Principle D of the ethics code, Justice, states in part, “Psychologists exercise reasonable judgment and take precautions to ensure that their potential biases...do not lead to or condone unjust practices.”

Everyone has biases. Biases can be based in personal belief systems, a preference for certain theoretical or conceptual approaches to psychological work or personal experiences. The ethical and professional forensic consultant engages in ongoing efforts to recognize his/her own biases so as to assure that these biases are not operating and influencing conclusions and testimony. The ethical and professional

consultant has processes in place, such as multiple hypothesis testing, that help control for bias and help assure accurate conclusions and opinions.

### **5. Know Relevant Law**

For the forensic psychologist, Standard 2.01(f) of the Ethics Code is uniquely relevant. This standard states "When assuming forensic roles, psychologists are or become reasonably familiar with the judicial or administrative rules governing their roles."

In addition to engaging in ongoing psychological training and maintaining state-of-the-art psychological competence, forensic consultants must commit themselves to learning relevant law and to maintaining ongoing psycho-legal education.

### **6. Do Not Draw Conclusions about Those Not Directly Assessed**

Provision 9.01(a) of the Ethics Code states "Psychologists base the opinions contained in their recommendations, reports and diagnostic or evaluative statements, including forensic testimony, on information and techniques sufficient to substantiate their findings." Provision 9.01(b) adds, in pertinent part "Psychologists provide opinions of the psychological characteristics of individuals only after they have conducted an examination of the individuals adequate to support their statements or conclusions."

Although a testifying consultant may be asked by the retaining attorney to offer opinions about the litigants, the ethically informed expert will not do so. Since the testifying consultant does not conduct his/her own assessment or investigation, offering testimony about psychological aspects of the litigants or the children involved is unwise. One can offer general educative comments about issues discussed by the evaluator (for example, information about what bipolar disorder is in a case where one of the parents has been identified as bipolar). However, the testifying expert consultant must stop short of offering opinions directly about the individual in question.

### **7. Use Caution with Psychological Testing**

Standard 9.02(a) states "Psychologists administer, adapt, score, interpret or use assessment techniques, interviews, tests or instruments in a manner and for purposes that are appropriate in light of the research on or evidence of the usefulness and proper application of the technique." Standard 9.02(b) states "Psychologists use assessment instruments whose validity and reliability have been established for use with members of the population tested. When such reliability and validity has not been established, psychologists describe the strengths and limitations of test results and interpretation."

When commenting upon the use of psychological tests, the ethically informed consultant keeps in mind the requirement to articulate the limitations of the data and, therefore, the degree to which the data are generalizable to those assessed. Since it is the case that there are no psychometrically valid/reliable tests that were normed on a population of child custody litigants or that were designed with this specific population in mind, it is best to use testing to generate hypotheses rather than to reach any conclusions about the individuals being assessed.

### **8. Beware of Computerized Test Interpretations**

Standard 9.09(c) states "Psychologists retain responsibility for the appropriate application, interpretation, and use of assessment instruments, whether they score and interpret such tests themselves or use automated or other services."

It is not at all uncommon for child custody evaluators to send psychological tests to scoring and interpretive services. Frequently used tests such as the MMPI-2 and MCMI-III are often scored and interpreted by computer-based services. While this may seem intuitively appealing on first blush and may seem to protect against bias introduced by manual interpretation of tests by an evaluator, a closer inspection reveals flaws in this point of view. Yes, computers are blind to the individual taking the test, the purpose for which the test is being administered and blind to any outcome bias on the part of the psychologist. Yet, there are fundamental problems with the belief that the "blindness" of the interpretations fosters accuracy. Moreover, the psychologist must maintain responsibility for the interpretation used. Since the psychologist cannot know the algorithm used by the computer to interpret

the test, the psychologist cannot assert that they actually know how the inferential conclusions are reached.

### **9. Clearly Detail Fee Arrangements**

Standard 6.04 is related to fees and financial arrangements. In all activities, the psychologist takes care to specify costs and fee arrangements regardless of the psychologist's role. When serving as a consultant or expert witness in child custody litigation, this responsibility remains important. Parents involved in child custody litigation quite readily feel vulnerable and believe that the stakes in the litigation could not be higher. Given their emotional vulnerability, such individuals are more easily exploited financially than other individuals may be. When parents believe that the well-being of their children is at stake, they are often willing to do things and take on expenses they might otherwise avoid.

The ethically informed consultant recognizes the vulnerability of the litigant (who after all, through the attorney's client trust account is paying for the consultant's fees). The ethically informed consultant and expert witness clearly describes and documents, in writing, the financial and fee arrangements attendant to involvement in the case so as to create reasonable and accurate expectations on the part of the client. Because the consultant and the expert witness operates ethically, the specification of fee arrangements also includes a discussion of how the consultant and expert witness are not being paid for their particular opinion or their point of view that supports a litigation position but, instead, is being paid for their work and the proffering of the accurate and honest professional opinion.

### **10. Less Experienced Professionals Need Not Apply**

Provision 2.01(a) refers to the *requirement* that psychologists practice within boundaries of their competence. Note that by its inclusion in the APA Standards, it becomes mandatory and not only aspirational that psychologists stay within areas of their competence.

Only senior professionals with many years of experience actually conducting custody evaluations should undertake working as a consultant or testifying expert in child custody litigation. While it may be tempting to place oneself in this role when one is less experienced, the work of a consultant or testifying expert is a truly expert role. Gaining such expertise not only requires proper education and ongoing training, it requires the kind of experience that can only be gained by having worked in the field over a period of many years.

Robert A. Simon, PhD is a licensed psychologist who is a recognized expert in forensic psychologist consulting with over 20 years of experience in the legal domain of family law and domestic relations. Dr. Simon is licensed in California and available for consultation throughout California and the United States. He has a book coming out in early 2013 published by the American Bar Association Section of Family Law, tentatively titled: *Forensic Work Product Review, Case Consultation and Expert Witness Testimony in Child Custody Litigation* with co-author Philip M. Stahl, PhD.





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## Thank You

Special thanks to members of the AFCC Conference Committee: Robin Deutsch, Hon. Denise McColley, Hon. Peter Boshier, Rachel Birnbaum, Christine Coates, Jennifer McIntosh and Marsha Kline Pruett.

Thanks to conference head shepherd Ernie Sanchez and shepherds: Alan Boudreau, Lois Cornils, Suzanne Hammel, Patricia Hicks, Brendan Holt, Daniel Hunter, Chris Jones, Jason Kemp, Sherrie Kibler-Sanchez, Rhonda Lucineo, Michael Ollom, Mike Puiia, Fernanda Rossi and Stephen Thompson.

Thanks to dine-around organizers Heather Scheiwe Kulp and Linda O'Connell.

AFCC also offers its gratitude to the following collaborating organizations for their help in making this conference a success: American Academy of Matrimonial Lawyers, American Bar Association Section of Dispute Resolution, American Bar Association Section of Family Law, International Academy of Collaborative Professionals, International Society of Family Law, National Association of Counsel for Children and National Council of Juvenile and Family Court Judges.

AFCC 49<sup>th</sup> Annual Conference, Chicago

Plenary Paper.

Jennifer E. McIntosh<sup>1</sup>

June 9, 2012.

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1. INFANTS AND OVERNIGHTS: THE DRAMA, THE PLAYERS & THEIR SCRIPTS

Indeed - controversy about infant overnight care in family law matters has reached another crescendo. Assertions by stakeholders are passionate, and deeply felt, as academics and advocates, parents and professionals joust across a dichotomous divide. At times, the saga resembles a three ring drama, on one stage. In the first two rings, at their worst, the dramas can look a little like this:

**In the first ring**, stage right, is the “mother knows best” drama: written by soft pro-mother types. Centre stage is a cradle, lovingly rocked by a 1950’s suburban mother, wearing an ironed apron, smiling with delight in her full time domestic role. At night, she protectively locks the gate to the house, and pockets the key. The father cannot get in. She calls out to him –see you in 3 years; you’ll be important then.

**In the second ring**, stage left, is the “fathers matter too” drama: written by pro-father types, the actors are forthright. The set depicts a modern world, and computers bling messages from ‘father’s for equality’ chat rooms. The actors discuss the sociology of modern fatherhood. They are *quite* loud, and seem a little angry. Front of stage is scattered an array of childhood delights: balls, bicycles, books, tents and adventure maps that evidently only fathers know how to use. Background is the demonic shadow of father absence, looming over a young child.

**In the middle there is a third ring.** The players are thoughtful, intelligent AFCC members. They are resting - weary from a decade long debate about infants and overnight care. They meet in a windy city, and gather around all the on-point data available on the subject. They find there isn’t enough to roast a marshmallow on. In contrast, towering behind them is a mountainous pile of advocate views, academic and pseudo-academic reviews, legislation, speculation, opinion,

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<sup>1</sup> © J.E.McIntosh. This plenary paper may be distributed *in whole*, with relevant acknowledgement. Permission to cite or distribute in part must be obtained from the author: mcintosh@familytransitions.com.au

projection, countertransference, rumour and parallel process, all jumbled up together. They feel strangely immobilized, and wonder what to do.....

One might reasonably ask where the infant is on this stage. This AFCC *conference* is about writing development back into the script. This *plenary* is about placing front of stage the infant: finding the infant's testimony about the meanings and possibilities of overnight arrangements for her or him, within the context of each infant's unique caregiving environment.

So, enter centre stage a toddler, **Frankie**, who we'll give the gift of speech and an academic degree. Frankie looks a little perplexed and says to us, why do you guys persist with this dichotomous view of things? If you are either on my dad's side or my mum's side, then who is on my side? So Mr. Demille, says Frankie – I'm ready for *my* close-up in this drama. First - use a powerful lens that helps people see me complexly. And second - I've brought my own script: It's my testimony in this dispute. It has not a single line about parent gender or equality, nothing about which of my parents is more important than the other, or who loves me more. My lines aren't about whether overnights are right or wrong: my script is about who I am, what I can handle, what is going well for me, what I find stressful, and what goes on around me that is just plain distressing. Call me egocentric if you will, but when I'm this little, my wants pretty much ARE my needs. Can science help you predict what I need? I'm not sure...

## 2. A synopsis of the current research : justified and unjustified conclusions

So can *science* help us fit an overnight care arrangement for Frankie, an infant under 3, who lives in her parents' world of separation? Let's back up and consider this word: *science*. To attribute the status of *science* to a field is to say we have attained a reliable level of disciplined knowledge, founded upon a wide, deep, rigorous and well replicated body of research. Let's be clear: we *do not* yet have a *science* of overnight care. What we have are small and loosely connected pieces of psychological research. *Psychological research* examines underlying *processes* that contribute to certain outcomes. It identifies patterns in group data. Precision in those patterns grows as our data sources and methodologies develop. But here's my take: even if we *do* one day have a well founded science of overnight care, fitting overnight care arrangements to an individual baby will always require bespoke tailoring.

Let me describe first what patterns are emerging from the research that is exactly on the point for our topic: believe me, this won't take long.

There have to date been 2 studies of overnight care arrangements focusing on early infancy, and two major studies that focused on the pre-school years. (The three authors involved, minus our co-authors, are all in this room, and all will speak to you this morning). Why so little research?

- a) high frequency overnight arrangements for infants under 3 years are *uncommon*– In Australia –6% of the general population of separated parents live this way. Internationally, shared time rates increase with the child's age. What this means is that in the study of infants, obtaining a large, representative sample who share care between their parents is a formidable challenge.
- b) The other thing researchers can do is recruit small volunteer samples, but in so doing, you have to drop a gold standard or two: like randomization and statistical power. Frankly the ethics get complicated if you want to randomly allocate babies to week on week off care, or some other overnight condition.
- c) So, having slim research pickings in this area is understandable. But even when we have better data sources, *there will be no such thing as the perfect study for the individual baby.*

**Here's a sketch of the three major studies we do have to date on babies and very young children.** Being studies of human beings, you should read the *original* studies for the designs, methodologies, and limitations of each, or if you read or hear secondary commentaries, understand the context in which they were written. And in contrast to attempts throughout the field to polarize us and our studies, please know that the three authors of these studies who are here today are colleagues who admire and respect each other's attempts to study what are complex and difficult issues.

In the first study of its kind, **Solomon and George (1999)** used attachment observations at one year and follow-up observations at 2 ½ years to compare organization of attachment behavior in 145 infants: some who had regular overnight arrangements, some who had no overnight stays, and infants in intact families. At follow-up they found more anxious, unsettled, and volatile angry behavior in toddlers who had regular overnights as infants, notably toddler breakdown on *reunion* with the primary caregiver, following a separation. They found significantly higher rates of insecure and disorganized attachment with that caregiver in the regular overnight group. They noted conditions of high parental conflict, anxiety, and parents' inability or unwillingness to communicate with each other about their baby as moderators in the baby's outcomes.

**Kline Pruett et al (2004)** report on older children (on average 4.9 years at follow up), whose

parents were part of a collaborative divorce project. They took mother and father reports on children's behaviour at two points in time, and compared outcomes for children who had had *any* overnight time during the study with those who had *none*. With respect to parenting time, overnighing children aged 4 to 6 years when their parents filed manifested fewer problems than did younger children. Girls aged 4-6 years benefitted from a consistent timeshare schedule that included overnight stays. Poor parenting and poor ex-couple relationships were associated with adverse child outcomes. Having multiple care-givers was a significant problem for young children.

The third and most recent study was conducted by **Bruce Smyth and Margaret Kelaher and myself**. Following recent neuroscience and attachment studies, we decided to focus in tightly on *emotional regulation*. We explored a large randomly selected general population dataset – the LSAC data. This amounts to 10,000 children 0-5 years. We extracted the sample of separated families, and looked at three age groups: infants under 2 years, 2-3 years, and 4-5 years. We defined 3 thresholds of overnight care for each age group – no overnights but some day contact; some overnights, and more frequent overnights (x 2 definitions by age: weekly or more for babies under two years, and 35% or more for 3-5 year olds).

First, as Smyth has noted many times elsewhere, we found that these overnight groups in the general population had different characteristics. Parents who shared the care of young children at high frequencies (35%+) were an advantaged group. Relative to the other groups, they had significantly higher incomes, were better educated, most likely to have co-habited in a committed pre-separation relationship, and most likely to have a cooperative relationship post-separation). Several have attributed good outcomes to shared time arrangements, without carefully accounting for the influence of characteristics of families who choose to live this way. This is important for our understanding of family court populations, who very often do not have these resources. Approaches to modelling the data therefore need to ask, in the *absence* of these qualities, is more shared time in and of itself helpful to infants? This is what we found in our study of the LSAC general population data:

1) **Consistent** with *both* the Solomon and George and the Kline-Pruett et al studies, deficits in parenting warmth, co-parenting relationship and psycho-social resources predicted several poor outcomes for young children.

2) **Consistent** with Solomon and George, having more frequent overnight care independently predicted difficulties in emotional regulation for infants *3 years and under*. **Consistent** with Kline-Pruett et al, we did *not* find this for children *4 years and over*.

**For infants 0-2**, signs of stress in the ‘more frequent’ overnights group (one night a week or more) were: more irritability and fretful behaviours with the main care-giver, and more vigilant monitoring of the whereabouts of the main care-giver.

**In the 2–3 year old group** signs of stress in the ‘more frequent’ overnights group (35%+) were: lower persistence with play, activity and learning, and a range of distressed behaviours expressed with the main care-giver (crying or hanging on to that parent when he or she tried to leave; worrying a lot or seeming very serious; not reacting when hurt; often becoming very upset; gagging on food; refusing to eat; hitting, biting, or kicking that parent). Again, these disturbed behaviours were shown during interactions with the main care-giver. They were not evident *socially*. They were not *global* difficulties. They were very specific affect regulation difficulties expressed in the context of their main care-giving relationship.

To cut a long story short, we took these findings, looked at the other studies, saw a pattern (see if you can spot it)..... and said, hmm..... Having any overnights at all - *ever* - doesn't seem to be the problem. There *does* seem to be a greater chance of difficulty with emotional regulation for infants younger than 3 to 4 years - who have *high frequency* overnight schedules. Until we get new evidence to the contrary, *maybe* some caution is warranted when applying presumptions for equal or near equal time splits to *infants three and under*.

Well.... That upset one or two people.... and the misuse of these findings began. We have all found the purposes, designs and findings of our respective studies twisted beyond recognition, and motivations and intent attributed to us that defie belief.

### 3. Justified and unjustified conclusions

Before you too use the findings of these studies for a specific case or cause, please understand this about them all:

1. You would not be justified in using these data to support any argument either way about the significance of parent gender in the overnight equation.
2. You would not be justified in using these data to support an argument against all overnight care of infants.

Here is what we believe the available data *do* suggest about infants:

*All else being equal*, at three years and under, frequent overnight arrangements are more *likely* to be taxing on emotional security and regulatory processes than they are at four years and over.

*All else being equal....* (Bridges pictures) In the *individual case*, there are parents, co-parents, temperaments, needs and circumstances that will combine to make ANY arrangement a *struggle* for the baby– There are parents, co-parents, temperaments, needs and circumstances that will combine to make ANY arrangement *supportive* for their baby.

And as ever, lessons from the individual case rightly lead us to a multitude of remaining empirical questions– Some key outstanding questions include:

1. Which babies do better in higher frequency time splits?
2. In what circumstances are overnights and higher time splits protective or necessary? Babies with tired, ill and stressed parents come to mind.
3. What parenting behaviours support security in overnight schedules?
4. What of babies from cultures where communal night care is normative? Attachment mechanisms do not work differently cross cultures – but the caregiving context does.
5. What is the place of other confounders in the mix: busy parents, child care, distance, violence, poverty, alcohol, drugs – siblings, supportive grandparents, health, wealth and social capital; there are many things that work for and against infant security in the individual case.

Part of the inelegance of the current debate – indeed part of the ugliness of it – is in the reaching for black letter law, for rules and for universal policies that establish a formula about overnight care for infants. The infant herself *defies this at every turn*, in her uniqueness and in the uniqueness of her caregiving environment. The infant invites us to look deeply at *her* developmental testimony - and to think *complexly* about her developing emotional security, to approach her case *wondering* about who this baby is, and what her caretaking environment enables her to be.

#### 4. Summary: In search of the infant's testimony

With a foot in both my research and clinical worlds, here is my pared down version of what the infant's testimony might look like if the parenting arrangement - overnights or not - was developmentally supportive.

In this testimony, we would see that:

1. the infant is physically safe
2. the infant is emotionally safe
3. the infant's daily stress is manageable
4. the infant remains organized in seeking comfort from each parent
5. the infant finds at least some delight with each parent
6. the infant remains reasonably settled across caregiving contexts

In this simple language, I'm talking about organized attachment – noting that attachment *organization* and attachment *security* are *not the same thing*. Organized attachment does not mean a perfect world in which infants cope in perfect ways. Organized attachment allows the infant to seek and find emotional regulation *without collapse*. Over time, organized attachments help buffer the infant from *many* developmental risks.

I for one would like an infant to be safe and to have an organized attachment platform in their life. Now apply that wish to the family court population, and you may agree that we have to do more than cross our fingers and hope for it. Can we place a skillful task like managing frequent overnight arrangements on top of deep mistrust, or fear, or incompetent and uncoordinated co-parenting and expect an infant to thrive? In the high conflict arena of family law matters, I suggest King Solomon's solution has little, if any place.

In evoking the kings, I may as well go on and evoke the gods: My new prayer to the secular God/Goddess of Family Law is this:

Please – whoever you are - grant this field better data sources and funding, and remove the temptation to grind axes. Give us sensitive research tools, and deliver us from shallow methodologies. Give us depth and skill to describe the mysteries of the infant's experience .... Give us the wisdom to ask the right questions, to patiently tolerate the gaps in our developmental knowledge and not to backfill them with ideology and unsubstantiated opinion. Help us to have intelligent conversations, to build a body of reliable information, to debate and to discover, through thoughtful inquiry. Help us to see and respect the infant's testimony in each case. All this we ask on behalf of the infant. "Amen".

**Jennifer McIntosh, Ph.D.**  
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