



ASSOCIATION OF
FAMILY AND
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eNEWS



Seattle Here We Come!

AFCC 53rd Annual Conference • June 1–4, 2016

Modern Families: New Challenges, New Solutions

Keynote Speakers Announced

AFCC is pleased to announce our featured speakers: Stephanie Coontz, Dr. Kyle Pruett, and Justice Mary Yu. [Learn more—brief speaker bios](#)

Sponsorship and Print Advertising Deadline Approaching

December 4 is the deadline for sponsors to be listed on the front inside cover and for print ads to be included in the program brochure, which is mailed to thousands of family law professionals. Past conference sponsors have included businesses, organizations, law

MONTHLY E-
NEWSLETTER
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Upcoming Conferences

AFCC 53rd Annual Conference

*Modern Families:
New Challenges, New Solutions*
June 1–4, 2016
Sheraton Seattle Hotel
Seattle, Washington
[More information](#)

AFCC 12th Symposium on Child Custody Evaluations

November 3–5, 2016
Sheraton Atlanta Hotel
Atlanta, Georgia

AFCC Trainings

firms, practice groups, and individuals. If you are interested in discussing opportunities please contact [Erin Sommerfeld](#), AFCC Marketing and Communications Manager. [More information](#)

The complete conference program brochure will be available online in late December. All AFCC members will receive a print copy by mail in January 2016. Check the [AFCC website](#) for the latest information.

Unbundling Legal Services Guides for Clients, Courts and Counsel

There are many factors contributing to the growing numbers of self-represented litigants. In response to this reality, legal professionals are finding new ways to provide services to serve families who could otherwise not afford counsel.

AFCC, in partnership with the Honoring Families Initiative of the Institute for the Advancement of the American Legal System (IAALS), has developed a series of guides and toolkits on unbundling services for consumers/clients, non-legal professionals, lawyers, and courts. [The resource guides and toolkit are available for download.](#)

Listserv Launch and Updates from the Child Welfare Collaborative Decision Making Network (CWCDMN)

Marilou Giovannucci, MS, Amston, Connecticut, and Laura Bassein, JD, Albuquerque, New Mexico

While to some it seems like just a few days ago that the CWCDMN convened an open forum at the AFCC Annual Conference in New Orleans, almost six months have passed since then. Discussions at the forum were fruitful. We are pleased to announce a new listserv and plans to expand our steering committee. [Read more](#)

Give to the AFCC Scholarship Fund

Help others attend AFCC conferences by giving to the AFCC Scholarship Fund. The annual appeal letter was recently mailed to all AFCC members. Consider giving today, every gift—\$100, \$50, \$25, any amount that feels right to you—gives more professionals the opportunity to attend an AFCC conference. Receiving your gift by the end of 2015 helps us plan for next year, and will provide US taxpayers with a deduction for the 2015 tax year.

[Donate online today](#)

Free Conference Audio for Members, USBs Available AFCC Regional Conference in Columbus, Ohio

Do You Hear What I Hear? Listening to the Voice of the Child

Thank you to everyone who participated earlier this month! We look forward to the next Regional Conference November 2–4, 2017, in Milwaukee, Wisconsin. Audio recordings of sessions are available for



Construction of an Effective Parenting Coordination Process: Structure, Tools, and Techniques

Debra K. Carter, PhD
November 30–December 1, 2015
University of Baltimore
Baltimore, Maryland
[More information, online registration](#)

Complex Issues in Family Law and Child Custody

Philip M. Stahl, PhD, ABPP
December 2–3, 2015
University of Baltimore
Baltimore, Maryland
[More information, online registration](#)

AFCC Chapter Annual Conferences

New York Chapter Annual Conference with AAML-NY

November 20, 2015
New York City Bar Association
New York, New York
[More information](#)

Texas Chapter Annual Conference

January 22, 2016
Thompson Conference Center
at the University of Texas

purchase through [Digital Conference Providers, Inc.](#) AFCC members can access free audio recordings of plenary sessions in the [Member Center](#). A limited number of USB drives containing conference materials are available for purchase, \$20 for members, \$40 for non-members. Shipping and handling fees will apply. Call or [email AFCC](#) to order.

In Memoriam—Lorraine E. Martin, MSW, RSW

Lorraine E. Martin passed away peacefully at Emmanuel House Hospice in Hamilton, Ontario, Canada, on November 1, 2015, at the age of 70, after a brief struggle with lung cancer. She will be remembered for her contributions to family mediation and developing the custody/access clinical program for the province as clinical coordinator at the Office of the Children's Lawyer for 17 years. Lorraine was an early pioneer in the field of services to divorcing families and was one of the first in Canada to become a trained family mediator. Lorraine Martin served on the AFCC Executive Committee in the 1990s and was co-chair of the Task Force that developed the Model Standards of Practice for Child Custody Evaluation. She was the 2010 recipient of the AFCC President's Award.

[Read more](#)

Reader Response to Point Counterpoint: Play Therapy and Child Custody Evaluation

Chaim Steinberger, JD, New York, New York

A response to [last month's AFCC eNEWS articles](#) on the role of play therapy in child custody evaluations by Anita Trubitt, MSW, LCSW and David Martindale, PhD, ABPP.

[Read more](#)

Chapter News

Welcome and congratulations to new chapter presidents:

- Ontario Chapter, **Andrea Himel, LLB, MSW**
- Illinois Chapter, **Sol Rappaport, PhD, ABPP**

Member News

Allan Barsky, JD, MSW, PhD, professor in the School of Social Work at Florida Atlantic University was awarded the Excellence in Ethics Award by the National Association of Social Workers (NASW) for his contributions to professional social work ethics. Dr. Barsky has served on the NASW National Ethics Committee since 2007, including service as its chair from 2012 to 2014.

Bernard S. Mayer, PhD, Kingsville, Ontario, Canada, professor of dispute resolution at the Werner Institute for Negotiation & Dispute Resolution, Creighton University, was awarded the Association for Conflict Resolution's 2015 John M. Haynes Distinguished Mediator

Austin, Texas
[More information](#)

Arizona Chapter Annual Conference

January 29 –31, 2016

Hilton Sedona Resort
Sedona, Arizona

[More information](#)

California Chapter Annual Conference

February 19–21, 2016

InterContinental Mark Hopkins
San Francisco, California

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Ask the Experts

Is there a topic you would like to see covered by an AFCC Ask the Experts piece?

[Email your suggestion](#)

The opinions expressed in articles published or linked to in the *AFCC eNEWS* are those of the authors and do not necessarily reflect the positions of the Association of Family and Conciliation Courts.

Readers are welcomed and encouraged to forward this e-newsletter to interested colleagues. [Learn more or subscribe](#)

Editor:

Erin Sommerfeld
editor@afccnet.org



Award. Dr. Mayer has provided conflict intervention for more than 35 years and is the author of several books on the subject.

Staff News

Corinne Schlachter joined AFCC as a program coordinator earlier this month. Corinne earned her undergraduate degree in International Studies with an emphasis in Political Science and dual minors in English Literature and French from Pepperdine University.

Nominate a Colleague for an AFCC Award

AFCC awards were created to acknowledge the many important contributions made by individuals and organizations to enhance the lives of children and parents involved in family courts. Nominations help to recognize and bring attention to these accomplishments. Even if your nomination is not selected, the act of nominating a colleague helps to highlight the broad range of achievements in the field and helps to cultivate a culture where we give thanks to individuals and organizations for their contributions.

Nominations for the following AFCC awards, to be presented at the Annual Conference in Seattle, will be accepted online through March 15, 2016.

- **John E. VanDuzer Distinguished Service Award** recognizes outstanding contributions and/or achievements by AFCC members;
- **Stanley Cohen Research Award**, sponsored by the Oregon Family Institute, recognizes outstanding research and/or achievements in the field of family and divorce; and
- **Irwin Cantor Innovative Program Award** recognizes innovation in court-connected or court-related programs created by AFCC members.

[Nomination application, complete award descriptions and list of past recipients](#)

Call for Nominations AFCC Board of Directors

The AFCC Nominating Committee is seeking nominations for individuals to serve on the AFCC Board of Directors. Recommended individuals must be AFCC members and have an interest in and knowledge of AFCC and its work. Nominations must be received by January 31, 2016, in order to be considered by the committee prior to the election at the AFCC 53rd Annual Conference, June 1-4, 2016, in Seattle. The term is three years, beginning July 1, 2016, and concluding June 30, 2019. If you or a member you know is interested, please send the first and last name, contact information, resume and a letter of intent to the AFCC Nominating Committee, c/o AFCC, 6525



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Listserv Launch and Updates from the Child Welfare Collaborative Decision Making Network (CWCDMN)

Marilou Giovannucci, MS, Amston, Connecticut, and Laura Bassein, JD, Albuquerque, New Mexico

While to some it seems like just a few days ago that the CWCDMN convened an open forum at the AFCC Annual Conference in New Orleans, almost six months have passed since then. Discussions at the forum were fruitful. We are pleased to announce a new listserv and plans to expand our steering committee.

The open forum was well-attended by those interested in conflict resolution in child welfare matters and who work daily to improve outcomes for children and their families using child protection mediation, family group conferencing, family group decision making, and other collaborative processes. All shared a common goal: to encourage collaborative decision making among families and professionals who are involved with the court because of child safety, neglect and permanency matters.

During the open forum we heard about the history and evolution of the network including accomplishments such as the development of the [Guidelines for Child Protection Mediation](#), think tanks and webinars. We also heard about the many challenges faced by individuals and programs; forum participants expressed a need to connect with one another and with others doing similar work, and an interest in raising awareness and being able to share resources, training, and research about the importance of using alternative dispute resolution processes in child welfare.

Participants shared an overarching interest in engagement and expansion—engagement across similar disciplines and expansion by reaching out to other disciplines within the child welfare arena, including having a greater international focus. Concrete suggestions for ongoing activities of the network included: the creation of a listserv for sharing resources and ideas, development of more webinars, partnering with other organizations to advocate the use of child protection mediation (CPM) and other collaborative processes, and convening more child welfare-focused events at future AFCC conferences.

We are happy to report that thanks to Beth Gillia (UNM School of Law Institute of Public Law Manager and Corrine Wolfe Children's Law Center Director) and Laura Bassein (UNM School of Law Institute of Public Law Senior Attorney) a Child Protection

Mediation listserv was launched in September 2015. The listserv is open to anyone who is interested in CPM or related collaborative processes.

If you have a pressing issue in your program or practice, a question to pose, a resource to share, news of an upcoming training or event, or if you simply want to connect with others with similar interests, join the listserv:

Corinne Wolfe Children's Law Center, Child Protection Mediation Listserv **Listserv Purpose**

The purpose of the Child Protection Mediation listserv (CPMediation-L) is to provide a forum for professionals involved or interested in mediation and related conflict resolution processes in **civil child abuse and neglect cases** to share information and ideas.

The conversations on this listserv focus on dispute resolution mechanisms used in cases involving government departments of social services and the families with which they interact.

For more information, Child Protection Mediation Guidelines and information about the Child Welfare Collaborative Decision Making Network can be found on the [AFCC website](#). The listserv is managed by the [Corinne Wolfe Children's Law Center](#) at the University of New Mexico School of Law. If you have questions about the listserv, contact Laura Bassein at the Children's Law Center at bassein@law.unm.edu.

How to Join:

- Email the following information to Laura Bassein at bassein@law.unm.edu
 - First name, last name, city, state/province, and email address
 - Your reason for joining the listserv
- When your listserv membership is confirmed, you will receive a confirmation email with information about the listserv.

The CWCDMN is also interested in expanding its steering committee. The steering committee has planned and offered past think tanks and open forums, and coordinated the inclusion of child welfare topics in AFCC conference institutes and workshops. It has worked closely with AFCC leadership to establish a home for the Network and to maintain a child welfare presence within AFCC membership. The steering committee meets approximately every six weeks by conference call; if you are interested in joining, contact Marilou Giovannucci at mgiovannucci@gmail.com.



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eNEWS

A Call for Humility in a Small World

Anita Trubitt, LCSW, MSW, MEd, RPT, Kailua, Hawaii

For more than 25 years, my most important professional affiliations have been with AFCC and APT (Association for Play Therapy). The latter has guided my work as a clinician; the former as a court-appointed custody evaluator, GAL or parenting counselor. When I was asked by a divorce attorney to undertake my first custody evaluation many years ago, the then recently-published *Solomon's Sword* (Schutz, et al, 1989), and still a fine example today, was my first "bible". Shortly after that, I discovered and joined AFCC. I have presented several times at conferences of both organizations. AFCC's journal has been my primary resource in clinical and forensic work, as most of the children I see in therapy live in two homes and have parents who are in litigation over their custody.

As a child and family therapist in private practice for more than 30 years, the observation of children and their parents in the playroom, in spontaneous and structured activity, is an important part of my on-going assessment of the family. Equally important is the obtaining of a detailed family history, learning about parents' expectations and discipline styles, communicating with children's teachers about how they are doing in school, inviting children to draw themselves and then their family, observing the themes and patterns in their spontaneous play with doll house, art materials, and in the sand tray. All of these contribute to my understanding of the child, and guide my on-going treatment as a clinician.

My first court-ordered appointment to conduct a child custody evaluation was in 1987, years before the AFCC published its 2005 *Model Standards of Practice for Child Custody Evaluation*. With no restriction on its inclusion, it seemed a natural evolution to incorporate some play therapy activities into the comprehensive protocol described by Schutz, et al. Their book, in fact, lays out several play tasks for parents and children as part of their evaluation. The field was newer then and we were all looking for relevant and responsible ways of obtaining information about the child that would help us in the daunting task of determining their best interests. I have had collegial exchanges with others at AFCC who have asked how it is possible to evaluate young children without including the observation of their play. Several have shared that they incorporated projective play as part of their assessments. I would venture a guess that this is still true for many clinicians who perform child custody evaluations.

When I wrote my self-published book, *Play Therapy Goes to Court* (2004), AFCC published a brief description in the *AFCC NEWS*. David Martindale, William Austin and Lorraine Martin, leadership of the task force that was then in the process of writing the

AFCC Model Standards, wrote a critical response. At the same time, several other AFCC members who read their critique wrote to me with their questions about how a clinician might incorporate play and projective material in their forensic work, and said there needs to be dialog about this.

While I appreciate and respect AFCC, it should be also understood that the Model Standards, for which Dr. Martindale served as Reporter, have not been adopted by all, including many of the judges in our family court. There are likely many clinicians, some perhaps long-time members of AFCC, who still rely on play therapy modalities to first engage the child in a more natural circumstance, then observe their play behavior, make tentative inferences about it, and note if it is consistent with other pieces of the evaluation. By “play behavior”, I include the observation of projective play activities of the individual child, and structured play activities that include parent and child. What we are looking for in such inclusion is redundancy and consistency in all the data we have gathered in the course of the evaluation.

Here are what other experts have to say about what children’s play can tell us:

Schutz et al, (1989): “The direct observation of interaction between parents and children provides some of the most important data we obtain in our evaluation process. It is also the method that has received the least research attention...The structured observational format consists of five discrete segments, each with its own task: (1) free play, (2) teaching tasks, (3) cooperation task, (4) problem-solving task and (5) clean up.”

Garbarino, (1992, p. 169): “The information children give us through their play and stories has to be interpreted in light of their developmental status, their current life situation, and their history. In other words, children must be viewed within the context of their total life experience. The onus is on the adults to make intelligent and sensitive use of what children tell them through their play and stories. And the adults must depend on their knowledge and skill to use that information wisely.”

Stahl, (1994, p.70): “It is quite rare that a child will simply come into my office and talk about the issues in his life without engaging in an activity at the same time. These activities can be symbolic or non-symbolic, but in each instance they allow the child to feel more comfortable with the evaluation and express himself in some way...I find the use of two dollhouses often stimulates play that is connected with the sharing of two households for the child...These and other play experiences give some clues as to the quality of the relationship between a child and parent...We can ask children to draw a family doing something, which may represent their family experiences. This provides an understanding not only of the child’s place within the family, but also of the way that he perceives the relationship between each of his parents.”

Gitlin-Weiner, Sandgrund, and Schaefer, (2000, pp.8,9): “Despite the difficulties inherent in the use of play assessment techniques, they present much that cannot be acquired from formal testing techniques. Although play assessment can be used by itself, more typically it is used to support, complement, contradict, or elaborate the information obtained through other means and sources. In general, the greater the consistency of information from multiple sources, the greater the confidence in the

conclusions drawn from the data. Multiple sources of information safeguard against over-statements or over-exclusions in deductions drawn from a limited sample of behavior as observed in the laboratory play assessment.”

In his more recent book (Stahl, 2011, p106), he explains that his earlier views on using play therapy techniques have changed, and that while he believes “it is possible to use play as a means of gaining rapport and helping reduce the child’s anxiety, I have come to believe that there is tremendous risk in relying on children’s play as a means of gathering accurate family data.” In his chapter on interviewing children, Stahl raises many important considerations and strategies for gathering information from a school-age child, but these do not sufficiently differentiate between the older and younger child in obtaining relevant material for the evaluation. My position is that it is to this younger age group (3–6 years) that the inclusion of play into the process could provide us with more useful information, but only if it supports other data we have gathered from many other sources.

The research of Marsha Kline Pruett and Kyle Pruett (1999) is of special interest in its use of several play therapy methods with a small sample of children, age six and under. The purpose was to “examine how children’s perspectives are influenced both by the legal process of divorce and by what their parents inform them, purposefully or unintentionally, about the legal and mental health professionals who inhabit their world of divorce.”

Departing from the more widely used methodology of questioning parents about their children’s adjustment to the divorce, these authors were interested in the perceptions of the children themselves, and what might be learned about their capacity to express their perceptions through their play.

In the 1.5 hour home-based interviews, individual children were instructed to draw several pictures, including a picture of a person, of their family and of “divorce.” In addition to the drawings, two different doll houses were supplied, along with furniture, family dolls, pet figures and vehicles. The children were asked to set up the houses in any way they wished, and to use the play materials to act out a day, from waking up to going to bed, when they saw both their mom and dad.

“The majority of play sequences grouped themselves into three themes: (1) back and forth between houses, (2) lawyer play and courtroom drama, and (3) safety and security at home. The lower the conflict and the greater the child’s emotional resources, the less constricted the play themes and narratives; the greater the stress expressed by the child, the less complex and coherent the play” (p. 1546).

The children’s perceptions of lawyers and judges and what they do were also elicited in the interview, along with advice children thought judges should give to their parents, and what judges could do to make things easier for the family. Children’s responses indicated considerable “misinformation about divorce as an event and a process. What they did know was often inappropriate, frightening and confusing.” The authors conclude that “greater awareness is needed of the child’s desire to be heard during the process, to feel safe and less lonely, and to stay in touch with both parents and

extended families. Age-appropriate explanations of psychological and legal aspects of the divorce process are likely to support children's positive adjustment and mental health."

In a follow up article, "Get Over It: Perspectives on Divorce from Young Children," by Ebling, Pruett and Pruett (2009), in which they describe the quantified measures used (p.678) they state as follows: **"Our indirect method for learning about young children's wishes and concerns—identification of play themes—was far more fruitful than direction questioning. The direct questions were likely too complicated, abstract, or fraught for this age group. The high frequency of irrelevant responses we received to direct questions is instructive to our findings: our findings should admonish clinicians, researchers, or evaluators from over-relying on verbal methods in assessing young children. In contrast, children's play was quite revealing."** (my emphasis)

In "A Comprehensive Guide to Child Custody Evaluations, Mental Health and Legal Perspectives, author Joanna Bunker Rohrbaugh (2008) includes "interviewing Techniques and Questions for Ages 3–5: Structured Questions and Play with Follow-up Questions (p.293) which are similar to those suggested by D. Skafte in "Child Custody Evaluations: A Practical Guide (1985). These included play with stuffed animals and two separate houses, calling mom and calling dad on toy phones, changing yourself into an animal of your choice, three stated wishes and the "Island Game" in which a magical elf gives a girl or boy the choice of having one person come to live with them.

My appreciation of AFCC extends far beyond being given this opportunity to address some important differences in what constitutes an acceptable evaluation. The crafting of a set of Model Standards for evaluating the custody of a child, first done in 1994 and again in 2005, has contributed enormously to my understanding of the complex and responsible demands of this work. The commitment to utilizing only evidence that meets the stringent test of reliability and validity is a goal I support, while still seeking a way to include some of the techniques, methods and strategies that do not yet meet that test. This is the primary purpose for this submission, and illustrates the fundamental difference between Dr. Martindale's position and mine. This continues to be a search which I believe other clinicians support, because the currently accepted methodologies do not as yet have all the answers, especially in assessment measure for children under five or six years of age.

I would suggest that the four-level model of clinical inferences proposed by Timothy Tippins and Jeffrey Wittmann in "Empirical and Ethical Problems with Custody Recommendations: A Call for Clinical Humility and Judicial Vigilance" (2005) does provide us with guidelines for a responsible way in which to use our inferences in making recommendations to the court. I offer these examples from my own practice by way of illustrating how I have used them:

LEVEL I—(What the clinician observes)

report examples:

- “The child spontaneously blurted out that she wanted to live with her father because ‘my mother makes me eat all my vegetables and my father lets me eat whatever I want’.”
- “Her younger brother chose two adult family dolls, one male and one female, and used the male to kick the female across the floor.”
- “Father argued with the girl that the house they were building together was too big and when she stopped arguing with him that it wasn’t, she built a separate space for her room outside of the house.”

LEVEL II (What the clinician concludes about the psychology of a parent, child or family)

report examples:

- “Mother may be more concerned about the nutritional needs of this overweight child than father.”
- “Mother reported that father had been physically abusive to her and the child may have witnessed it.”
- “Child building her own room outside of father’s house may be an indication that she is not getting her needs met inside the house.”

LEVEL III (What the psychologist concludes about the implications of Level II conclusions for custody-specific variables)

report example:

- “Mother appears to be more attentive to, and accepting of, the children’s needs than father; there is evidence that he has been attempting to alienate the children from their mother; the parental time share needs to be very specific so that the children’s relationship with mother is not compromised.”

LEVEL IV (The psychologists conclusions about the custody-related “should” in the matter)

report examples:

- “As mother does not have a residence large enough to accommodate the children at this time, it has already been agreed by the parents that they will continue to live primarily with father. Mother shall pick up the children every afternoon after school, assist them with their homework and return them to father’s home by 6 pm. Children should be with her every Saturday from 9 am to 8 pm.”

- “If joint legal custody is awarded, a GAL shall be appointed to assist parents in making decisions about their children when they cannot agree.”
- “The children shall be in therapy until clinically discharged.”

As we continue to work on behalf of the best interests of children, we might well heed these authors’ “call for clinical humility and judicial vigilance” as we continue to humbly acknowledge the limits of our confidence in a field that is terribly complex, and that we hesitate just a little when we find ourselves believing that we have the last word.

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eNEWS

Much is Forgotten in 123 Years

David A. Martindale, PhD, ABPP, St. Petersburg, Florida

In 1892, writing on the topic of fingerprint analysis, Sir Francis Galton called attention to the issues that, in today's terminology, are referred to as inter-judge reliability and test/re-test reliability. Galton discussed differences in individual judgments (inter-judge reliability) and consistencies (or lack thereof) in successive analyses of the same fingerprint (test/re-test reliability).

The 123 intervening years have taken their toll on our collective memory, and, in 2015, we find evaluators extolling the virtues of assessment procedures that lack reliability and, as result, also lack validity. Henry Murray is generally viewed as one of the pioneers in the field of projective assessment. When Christiana Morgan and Murray, colleagues at the Harvard Psychological Clinic, wrote the first article about the Thematic Apperception Test (Morgan & Murray, 1935), the title chosen by them was: "A method for investigating fantasies: The Thematic Apperception Test." It is noteworthy that many evaluators who, today, employ the TAT describe the stories told by evaluatees as stories that reflect the evaluatees' *perceptions* of important interpersonal relationships, not as stories that reflect their fantasies. When Murray wrote the *Thematic Apperception Test Manual* (Murray, 1943), he cautioned that "TAT responses reflect the fleeting mood as well as the present life situation of the subject," adding that users "should not expect the repeat reliability of the test to be high..." (p. 18).

Trubitt has asserted that when an evaluator employs the *Family as Animals in the Sand* technique, the "sandtray... becomes a 3-dimensional representation of the child's perception of the family. . ." (Trubitt, 2004, p. 6). The observations offered by Murray regarding stories told in response to TAT cards are applicable to children's play. It cannot be safely assumed that a child's sand-tray play reflects perceptions (as opposed to wishes or fantasies). Neither can it be safely assumed that what a child displays in play on a particular occasion would be displayed on a different occasion, having been transported by a different parent, or having had a particularly good or bad morning at the day care center. Of equal importance is the fact that there are no published data establishing that two or more evaluators observing particular episodes of play generate the same (or reasonably similar) interpretations of the observed play.

Trubitt has also asserted that "[w]here [children] put the family doll that represents themselves tells us where they feel most comfortable or safe" (p. 6). If we presume that "where [children] feel comfortable or safe" is where children wish to be, when children feel

neither comfortable nor safe in their current placement, their doll placement decision would reflect a wished-for placement, not a perception of their current placement.

In the *AFCC eNEWS* article to which I am responding, Trubitt has written: “The commitment to utilizing only evidence that meets the stringent test of reliability and validity is a goal I support, while still seeking a way to include some of the techniques, methods and strategies that do not yet meet that test.” In 2006, Trubitt opined that she had found “a way to include some of the techniques, methods, and strategies” that do not meet “the stringent test of reliability.” She offered the following advice to colleagues: “[C]ontinue to use play therapy methods.... We do not have to mention its use at all in the report to the court” (Trubitt, 2006, p. 5).

Trubitt practices in Hawaii, and Hawaii Rule of Evidence 705 is taken from Federal Rule of Evidence 705, and experts “may in any event be required to disclose the underlying facts or data on cross-examination.” Thus, if Trubitt were to decide not to mention her use of play therapy methods in her report, she would be required to disclose (and defend) those methods on cross-examination. The rights of those who might wish to challenge the manner in which evaluators have developed their opinions are dramatically interfered with when evaluators fail to fully disclose the methods that they employed in formulating their opinions. No constructive purpose would be served if Trubitt’s advice were to be followed, and evaluators employing play therapy methods were to decide not to disclose their use of those methods in their reports. It is likely that such a practice would lead to otherwise avoidable litigation. When evaluators’ reports contain all the information reasonably needed by the litigants, their attorneys, and the court, the probability of pre-trial settlements is likely to be increased.

The wording of Hawaii Rule of Evidence 703 has also been taken from Federal Rule of Evidence 703; however, Hawaii elected to add a sentence that reads: “The court may, however, disallow testimony in the form of an opinion or inference if the underlying facts or data indicate lack of trustworthiness.”

In its decision in *State v. Montalbo*, 828 P.2d 1274 (1992), the Supreme Court of Hawaii offered commentary on the factors to be considered in making decisions regarding the admissibility of proffered evidence. Those factors included whether: “the procedures used are generally accepted as reliable if performed properly [and] the procedures were applied and conducted properly in the present instance” (at 1280, 1281). It is my position that no generally accepted interpretive rules (i.e., procedures) guide interpretive conclusions of the type found in Trubitt’s (2004) text.

Following research conducted on 72 children between the ages of two and four, DeLoache (1995) concluded that young children do not perceive dolls as symbolic representations of themselves. If that is the case, it is even less likely that animals in a sand tray are treated by children as symbolic representations of themselves.

Trubitt asserts that, in her work, she has employed the “guidelines for a responsible way in which to use our inferences in making recommendations to the court” provided by

Tippins and Wittmann (2005). Tippins and Wittmann have perused the examples furnished by Trubitt, and they disagree.

In their abstract, Tippins and Wittmann (2005) state that it is their intention to put forward the argument that where the empirical foundation for evaluator conclusions is tenuous or non-existent, those “opinions should be routinely excluded from the fact-finding process” (p. 193). In personal correspondence, Tippins and Wittmann have stated: “There is more to the Tippins & Wittmann model than simply formatting the report in accordance with the four-level structure posited in our article. The essential feature of our model is its proscription of inferences that cannot be supported by empirical research. Accordingly, if an evaluator wished to state that because the child played in X manner, conclusion Y may be drawn, adherence to our model would require that the evaluator cite research demonstrating that such conclusion can be reliably drawn. Expressing the inference without such empirical support would not adhere to our model.”

In her article, Trubitt includes Stahl’s position statement that “it is possible to use play as a means of gaining rapport and helping reduce the child’s anxiety, [but] . . . there is tremendous risk in relying on children’s play as a means of gathering accurate family data” (Stahl, 2011, p. 106). I conclude by expressing my agreement with Stahl. Play is an indisputably useful communication facilitation mechanism. It is not a reliable data gathering method.

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A Final Word

Anita Trubitt, LCSW, MSW, MEd, RPT, Kailua, Hawaii

Dr. Martindale chides me for suggesting we can omit observations about children's play from our custody evaluation reports. The drawings of self and family, the family as animals in the sand, the setting up of two doll houses, one representing mother's house, the other father's house are but a small piece of a many-faceted evaluation, that includes parent questionnaires and interviews, observations of parent-child interactions in the playroom and in the home visit, collateral contacts with teachers, counselors, pediatricians. While it is surprising how often these play examples are consistent with the other data, it is understood that they never form the sole basis of our recommendations to the court. We collect a mountain of material and we therefore have to be selective about what we include. It is understandable that we would select those examples that best support our own position, as Dr. Martindale has done in his overall assessment of my work. Perhaps this is why he omitted comment on the extensive research of Pruett, Pruett and Ebling and their examples of how very revealing children's play can be.

My primary purpose in submitting this article is to generate discussion, most specifically about what options are available to us as we observe, evaluate and recommend for the best interest of children under the age of five. My thanks to AFCC for this invitation.



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Reader Response to Point Counterpoint: Play Therapy and Child Custody Evaluation

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As an attorney who mediates but also litigates hotly-contested custody disputes, I read with interest the point counterpoint and reply of Anita Trubitt, LCSW, MSW, MEd, RPT, and David A. Martindale, PhD, ABPP. I have also followed for years the work and teachings of Tim Tippins, Esq., and Jeffrey Wittmann, PhD, who correctly advocate excluding unreliable testing techniques from court processes to ensure the integrity of our legal system and its decisions that affect so many lives.

Dr. Martindale argues that while an unreliable, untested technique such as play therapy may be used to establish rapport with young children, it should never be used to form conclusions or even hypothesis. Ms. Trubitt claims to similarly “support” the “commitment to utiliz[e] only evidence that meets the stringent test of reliability and validity,” (emphasis added) but contradictorily, still “seek[s] a way to include some of the techniques, methods and strategies that do not yet meet that test.” Disturbingly, she encourages others in her field to do the same. To Dr. Martindale’s point that using unreliable methods won’t hold up in court, Ms. Trubitt responds with a version of “we just won’t tell ‘em!” Because these unreliable techniques do not form “the sole basis” of her conclusions, Ms. Trubitt says, she can be “selective about what [she] include[s]” in her report. “It is understandable,” Ms. Trubitt claims, “that we would select those examples that best support our own position.”

I caution our colleagues in the mental health field that coloring data or testimony, presenting limited (i.e., only the supporting portions of) data, or becoming a partisan advocate (rather than an impartial reporter) can never be justified, even when it’s believed to be in service to the party you think should “win.” Your integrity hangs in the balance. Colored testimony is a form of deception and undermines not only your own credibility but that of your entire profession. Moreover, it disrespects and reveals your own lack of confidence in your knowledge and abilities, and the science that is the basis of your profession. Otherwise you would prepare your report and testify in court in an open, honest, forthright manner, revealing both the strengths and also the weaknesses of your discipline and methodologies, the supporting as well as conflicting data, and trust yourself, your skills, the science and the courts to, together, reach the correct decision in the case. If you do otherwise, a determined and dogged adversary will surely discover and reveal your bias to the court and destroy your credibility, impugn

your conclusions and, possibly, your ability to ever again work in this field. Besides, we all know that an even-keeled, disinterested, fair-minded reporter (who has no agenda of their own) is more trusted and persuasive with both the courts and the parties.

So please join me in upholding the integrity of the legal system by remaining committed to honesty, integrity and full transparency in these arenas so important to children.